

रजिस्टर्ड नं० पी०/एस० एम० 14.



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 7 अप्रैल, 1979/17 चैत्र, 1901

हिमाचल प्रदेश सरकार

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचनाएं

शिमला-171004, 23 मार्च, 1979

संख्या 1-30/79-वि० स०.—हिमाचल प्रदेश, विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश सिनेमा (विनियम) विधेयक, 1979 (1979 का विधेयक संख्यांक 1) जो हिमाचल प्रदेश

विधान सभा में 23 मार्च, 1979 को पुरःस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है ।

वेद प्रकाश भटनागर,
सचिव ।

Bill No. 1 of 1979.

**THE HIMACHAL PRADESH CINEMAS (REGULATION)
BILL, 1979**

(As INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to make provisions for regulating exhibitions by means of cinematographs in Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Cinemas (Regulation) Act, 1979.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of Himachal Pradesh.

(3) This Act shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) “cinematograph” includes any apparatus for the representation of moving pictures or series of pictures;

(b) “Government” means the Government of Himachal Pradesh;

(c) “notification” means notification published under proper authority in the Official Gazette;

(d) “Official Gazette” means the Rajpatra, Himachal Pradesh;

(e) “place” includes a house, building, tent and any description of transport, whether by sea, land or air;

(f) “prescribed” means prescribed by rules made under this Act.

3. Save as otherwise provided in this Act, no person shall give an exhibition; by means of a cinematograph, elsewhere than in a place licensed under this Act or otherwise than in compliance with any conditions and restrictions imposed by such licence.

Cinema-
tograph
exhibitions
to be
licensed.

4. The authority having power to grant licences under this Act (hereinafter referred to as the licensing authority) shall be the District Magistrate:

Licensing
authority.

Provided that the Government may, by notification in the Official Gazette, constitute for the whole or any part of Himachal Pradesh, such other authority as it may specify therein, to be the licensing authority for the purposes of this Act.

Restrictions
on powers
of licensing
authority.

5. (1) The licensing authority shall not grant a licence under this Act unless it is satisfied that—

- (a) the rules made under this Act have been complied with, and
- (b) adequate precautions have been taken in the place in respect of which the licence is to be given to provide for the safety of the persons attending exhibitions therein.

(2) Subject to the foregoing provisions of this section and to the control of the Government, the licensing authority may grant licences under this Act to such persons as it thinks fit, on payment of such fees and on such terms and conditions and subject to such restrictions as may be prescribed or may, after recording in writing its reasons therefor, refuse to grant any such licence.

(3) Any person aggrieved by an order of the licensing authority refusing to grant a licence under this Act may, within such time as may be prescribed, appeal to the Government or to such officer as the Government may specify in this behalf and the Government or the officer, as the case may be, may make such order in the case as it or he thinks fit.

(4) The Government may, from time to time, issue directions to licensees generally or to any licensee in particular for the purpose of regulating the exhibition of any film or class of films, so that scientific films, films intended for educational purposes, films dealing with news and current events, documentary films or indigenous films secure an adequate opportunity of being exhibited, and where any such directions have been issued those directions shall be deemed to be additional conditions and restrictions subject to which the licence has been granted.

Power of
the Govern-
ment or
local autho-
rity to
suspend
exhibition
of films in
certain
cases.

6. (1) The Government in respect of the whole of Himachal Pradesh or any part thereof, and the District Magistrate, in respect of the district within his jurisdiction, may, if it or he, as the case may be, is of the opinion that any film which is being publicly exhibited is likely to cause a breach of peace, by order, suspend the exhibition of the film and during such suspension the film shall be deemed to be uncertified film in Himachal Pradesh, part of Himachal Pradesh or district, as the case may be.

(2) Where an order under sub-section (1) has been issued by a District Magistrate, a copy thereof, together with a statement of reasons therefor,

shall forthwith be forwarded by the District Magistrate to the Government, and the Government may either confirm or rescind the order.

(3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Government may, if it is of opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit.

7. If the owner or person incharge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used in contravention of the provisions of this Act or of the rules made thereunder, or of the conditions and restrictions upon or subject to which any licence has been granted under this Act, he, as well as the manager, servants or agents of the person to whom the licence is granted, shall be guilty of an offence; and shall, on conviction, be punished with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues:

Penalties

Provided that, a person to whom a licence is granted shall not be guilty of an offence as aforesaid, if he proves that any offence committed by any person in his employ or on his behalf took place without his knowledge or consent, and that the employee or agent was not acting with his express or implied permission, and that he exercised all due diligence to prevent the commission of the offence or its continuation.

8. (1) Notwithstanding anything contained in this Act, the Government or the licensing authority may at any time suspend, cancel or revoke a licence granted under section 5 on one or more of the following grounds namely,—

Power to suspend, cancel or revoke licence.

- (a) the licence was obtained through fraud or misrepresentation;
- (b) the licensee has committed a breach of any of the provisions of this Act or the rules made thereunder or of any condition or restriction contained in the licence, or of any direction issued under sub-section (4) of section 5;
- (c) on account of any changes occurring in the locality of the place licensed, the continuance of the licence is considered prejudicial to decency or morality;
- (d) the licensee has been convicted of an offence under section 7 of this Act or section 7 of the Cinematograph Act, 1952 or section 7 of the Punjab Cinemas (Regulation) Act, 1952;
- (e) the licensee has been convicted for not less than two times of an offence punishable under clause (a) of sub-section (1) of section 18 of the Himachal Pradesh Entertainments Duty Act, 1968, or has compounded such offence for not less than two times under section 19 of that Act;

37 of 1952

11 of 1952

12 of 1968

(f) a penalty under section 17 of the Act referred to in clause (e) has been imposed for not less than two times on the licensee.

(2) Where the Government or the licensing authority is of the opinion that a licence granted under section 5 should be suspended, cancelled or revoked it shall, as soon as may be, communicate to the licensee the grounds on which the action is proposed to be taken and shall afford him a reasonable opportunity of showing cause against the action proposed to be taken.

(3) If, after giving such opportunity, the Government or the licensing authority, as the case may be, is satisfied that the licence should be suspended, cancelled or revoked, it shall record an order stating therein the ground or grounds on which the order is made, and shall communicate the same to the licensee in writing.

(4) Where the order suspending, cancelling or revoking a licence under sub-section (3) has been passed by a licensing authority, any person aggrieved by the order may, within thirty days of the communication of such order to him, prefer an appeal to Government which may pass such order as it thinks fit.

(5) The order of the Government shall be final.

Power to
make rules.

9. (1) The Government may, by notification in the Official Gazette, make rules—

- (a) prescribing the procedure in accordance with which a licence may be obtained and the terms, conditions and restrictions, if any, subject to which licences may be granted under this Act;
- (b) providing for the regulation of cinematograph exhibitions for securing the public safety;
- (c) prescribing the time within which and the conditions subject to which an appeal under sub-section (3) of section 5 may be preferred;
- (d) regulating the means of entrance and exit at places licensed under this Act, and providing for prevention of disturbances thereat;
- (e) regulating or prohibiting the sale of any ticket or pass for admission by whatever name called to a place licensed under this Act.

(2) In making rules under this section the Government may provide that any person failing to comply with or contravening the provisions of any rule shall, on conviction, be punished with fine which may extend to one thousand rupees. A failure to comply with, or on contravention of the provisions of a rule made under clause (e) of sub-section (1) shall be a cognizable offence within the meaning of the Code of Criminal Procedure, 1973. 2 of 1974

(3) The power to make rules under this section shall be subject to the condition of previous publication in the Official Gazette.

(4) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the Legislative Assembly while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the sessions aforesaid, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. The Government may, by order in writing, exempt, subject to such conditions and restrictions as it may impose, any cinematograph exhibition or class of cinematograph exhibitions as also the premises or site intended to be used for cinematograph exhibition from any of the provisions of this Act or of any rules made thereunder.

Power to exempt.

11. The Punjab Cinemas (Regulation) Act, 1952 as in force in the territories added to Himachal Pradesh under section 5 of the Punjab Reorganisation Act, 1966 and Part-III of the Cinematograph Act, 1952 in its application to the areas comprised in Himachal Pradesh immediately before the 1st November, 1966, are hereby repealed:

Repeal and savings.

Provided that anything done or any action taken (including any appointment made, notification, order or directive issued, rule framed, any licence issued, cancelled, suspended or revoked and any proceeding commenced or continued) shall, in so far as it is not inconsistent with this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force until superseded by anything lawfully done under this Act.

11 of 1952

31 of 1966
37 of 1952

STATEMENT OF OBJECTS AND REASONS

At present, in the areas comprised in Himachal Pradesh immediately before 1st November, 1966, the Cinematograph Act, 1952 is in force, whereas in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, the Punjab Cinemas (Regulation) Act, 1952, is in force. With a view to bringing about uniformity in respect of the regulation of exhibition by means of cinematographs it had been considered necessary to have a unified law on the subject for the whole of Himachal Pradesh and for this purpose the Bill No. 14 of 1976 was introduced in the previous Legislative Assembly. Since Bill has lapsed under clause (5) of Article 196 of the Constitution of India, a new Bill is required to be introduced in the State Legislative Assembly.

This Bill seeks to achieve the aforesaid objective.

SIMLA:
The 23rd March, 1979.

SHANTA KUMAR,
Chief Minister.

FINANCIAL MEMORANDUM

Nil

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill empowers the Government to make rules in respect of the matters enumerated therein and clause 10 of the Bill also empowers the Government to grant exemption to any cinematograph exhibition from any of the provision of the proposed legislation. This delegation is essential and of normal character.

शिमला-171004, 23 मार्च, 1979

संख्या 1-25/79-वि०स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश होमाइयोपैथिक प्रैक्टिशनरज़ बिल, 1979 (बिल नम्बर 6 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 22 मार्च, 1979 को पुरःस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है ।

वेद प्रकाश भटनागर,
सचिव ।

Bill No. 6 of 1979.

THE HIMACHAL PRADESH HOMOEOPATHIC PRACTITIONERS BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to regulate the qualifications and to provide for the registration of practitioners of the homoeopathic system of medicines in the Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (1) This Act may be called the Himachal Pradesh Homoeopathic Practitioners Act, 1979.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of Himachal Pradesh.

(3) It shall come into force on such date as the Government may by notification in the Official Gazette appoint in this behalf.

2. In this Act, unless the context otherwise requires,—

Definitions.

- (1) “chairman” means the chairman of the Council;
- (2) “Council” means the Council of the Homoeopathic System of Medicines, Himachal Pradesh, established and constituted under section 3;
- (3) “Government” means the Government of Himachal Pradesh;
- (4) “homoeopathic system” means the homoeopathic system of medicines founded by Dr. Hahnemann, and includes the bio-chemic system of medicines founded by Dr. Schussler and the expressions “homoeopathic” and “bio-chemic” shall be construed accordingly;
- (5) “inspector” means an Inspector appointed under sub-section (1) of section 20;
- (6) “member” means a member of the Council and includes the chairman;
- (7) “practitioner” means a person who practises the homoeopathic system;
- (8) “prescribed” means prescribed by rules or regulations made under this Act;
- (9) “qualifying examination” means the examination held for the purpose of granting a degree, diploma or certificate conferring right of registration under this Act;
- (10) “register” means the register of practitioners maintained under section 15;

- (11) "registered practitioner" means a practitioner whose name is for the time being entered in the register;
- (12) "Registrar" means the Registrar appointed under section 14;
- (13) "regulations" means regulations made under this Act; and
- (14) "State" means the State of Himachal Pradesh.

PART II

ESTABLISHMENT, CONSTITUTION AND INCORPORATION OF COUNCIL AND REGISTRATION OF PRACTITIONERS

Establishment, constitution and incorporation of Council.

3. (1) The Government may, as soon as may be, by notification establish a Council to be called, 'The Council of Homoeopathic System of Medicines, Himachal Pradesh' for the purpose of carrying out the provisions of this Act.

(2) The Council shall be a body corporate with the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, and to contract, and may by that name sue and be sued.

(3) The Council shall consist of eight members residing in Himachal Pradesh of whom—

- (a) three members shall be nominated by the Government one of them, if possible, being a person connected with such institutions as are referred to in Schedule-I; and
- (b) five members, of whom not less than three shall be persons holding a degree, diploma or certificate in the homoeopathic system from such institutions as are referred to in Schedule-I, shall be elected by the registered practitioners from amongst themselves.

(4) The chairman of the Council shall be nominated by the Government from amongst the members and shall hold office during the pleasure of the Governor.

(5) The chairman of the Council and the five members mentioned in clause (b) of sub-section (3) shall in the case of first Council to be constituted, be nominated by the Government from amongst practitioners, and such members shall be deemed to have been duly elected under clause (b) of sub-section (3):

Provided that not less than four of such members shall be persons holding a degree, diploma or certificate in homoeopathic system from such institutions as are referred to in Schedule-I.

(6) Every election or nomination of member and every vacancy in the office of a member shall be notified by the Government in the Official Gazette.

Election of members.

4. The election of members under clause (b) of sub-section (3) of section 3 shall be held at such time and place and in such manner as may be prescribed.

5. If any of the members is not elected under clause (b) of sub-section (3) of section 3, the Government may, notwithstanding anything contained in that sub-section, nominate such registered practitioner as it deems fit, and the practitioner so nominated shall for the purposes of this part be deemed to have been duly elected under that clause.

Nomination
of members
in default
of election.

6. (1) Save as otherwise provided, the term of office of elected and nominated members shall be five years commencing from the date on which the first meeting of the Council is held after the members are elected under sub-section (3) of section 3:

Term of
office.

Provided that the term of office of members nominated to the first Council shall be three years from the date on which the first meeting of such Council is held.

(2) An outgoing member shall continue in office until the election or nomination of his successor as the case may be.

(3) The outgoing member shall be eligible for re-nomination or re-election.

7. (1) If a vacancy occurs in the office of a member due to death, resignation, removal or disability of such member or otherwise, it shall be filled in the same manner as is provided in section 3.

Vacancies.

(2) Any person nominated or elected to fill the vacancy shall not withstanding anything contained in section 6, hold office only so long as the member in whose place he is nominated or elected would have held office if the vacancy had not occurred.

8. Any member may at any time resign his office by letter addressed to the chairman and such resignation shall take effect from the date on which it is accepted by the Council:

Resignation.

Provided that the chairman may resign his office by letter addressed to the Government and his resignation shall take effect from the date on which it is accepted by the Government.

9. If any member during the period for which he has been nominated or elected—

Disabilities
for continu-
ing as mem-
ber.

(a) absents himself without such reasons, as may, in the opinion of the Council, be sufficient, from three consecutive meetings of the Council, or

(b) becomes subject to any of the disqualifications mentioned in section 10, or

(c) being a legal practitioner, appears in any suit or proceeding, civil or criminal, against the Council, or

(d) obtains any employment under the Council or has without the previous sanction of the Government acquired directly or indirectly by himself or by a partner any share or interest in any contract made with, by, or on behalf of, the Council.

the Council may declare his office to be vacant:

Provided that in a case falling under clause (b), the Council shall declare the office to be vacant.

Disqualifi-
cations.

10. No person—

- (a) who is a minor or an undischarged insolvent, or
- (b) who has been adjudicated by a competent court to be of unsound mind, or
- (c) whose name has been removed from the register, or
- (d) who has been sentenced by a court to imprisonment for an offence which, in the opinion of the Council, involves moral turpitude or indicates such a defect of character as would render the entry or continuance of his name in the register undesirable, the sentence not having been subsequently reversed in appeal or revision, or remitted by an order which the Government is empowered to make in that behalf, or
- (e) who has been found guilty, by a majority of two-third, of the members of the Council present and voting at the meeting thereof, of infamous conduct in any professional respect after enquiry by the Council at which an opportunity has been given to such person to be heard in his defence either personally or through a representative, or
- (f) who is a dismissed servant of the Government or any local authority,

shall be eligible for being elected or nominated as a member.

Vacancies
etc. not to
invalidate
proceedings
of Council.

11. No act done, or proceeding taken, under this Act by the Council shall be invalid merely on the ground—

- (a) of any vacancy or defect in the constitution of the Council, or
- (b) of any defect or irregularity in election or nomination of a person acting as a member thereof, or
- (c) of any defect or irregularity in such act or proceeding, not affecting the merits of the case.

Time and
place of
meetings of
Council.

12. The Council shall meet at such time and place and every meeting of the Council shall be summoned in such manner as may be prescribed by regulations:

Provided that until such regulations are made it shall be lawful for the chairman to summon every meeting of the Council at such time and place as he may deem expedient by letter addressed to each member separately.

Procedure
at meetings
of Council.

13. (1) The chairman, and, in the absence of the chairman, vice-chairman elected by the members shall preside at a meeting of the Council.

(2) All questions at a meeting of the Council shall be decided by the votes of the majority of the members present and voting and, in the case of an equality of votes, the chairman for the time being may, in addition to his vote as a member of the Council exercise a second or a casting vote.

(3) Three members shall form a quorum at a meeting of the Council:

Provided that if a meeting is adjourned for want of quorum, no quorum shall be necessary at the next meeting called for transacting the same business.

(4) The vice-chairman shall be elected in the first meeting of Council by majority of the members present and voting.

14. (1) Subject to the rules made in this behalf, the Council shall, with the previous approval of the Government, appoint a Registrar who shall receive such salary, allowances and be subject to such conditions of service as may be prescribed:

Registrar.

Provided that until a Registrar is appointed, a person appointed by the Government shall, as from the commencement of this Act, be deemed to be the Registrar, who shall be entitled to such salary and allowances and shall be subject to such conditions of service as may be determined by the Government.

(2) The chairman may, from time to time, grant leave to the Registrar and the Council may appoint a person to act in his place.

(3) Any person duly appointed to act as a Registrar shall be deemed to be the Registrar for all the purposes of this Act.

(4) Any order of the Council appointing, punishing or removing the Registrar from office shall not be passed without the previous approval of the Government.

(5) The Council may appoint such other officers and servants as may be necessary for carrying out the purposes of this Act:

Provided that the number and designation of such officers and servants and their salaries and allowances shall be subject to the previous approval of the Government.

(6) The Registrar and any other officer or servant appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(7) The Registrar shall be the Secretary of the Council and shall act as Executive Officer of the Council.

15. (1) Subject to the provisions of this Act and the rules made thereunder and subject to any general or special order of the Council, it shall be the duty of the Registrar to keep the register.

Duties of the Registrar.

(2) The register shall be kept in such form as may be prescribed and shall contain the name, address and qualifications of every registered practitioner together with the dates on which such qualifications were acquired. The register shall be divided into the following two parts:—

Part-A—containing the names of practitioners referred to in sub-section (1) of section 16; and

Part-B—containing the names of practitioners referred to in sub-section (2) of section 16.

(3) The Registrar shall keep the register correct as far as may be possible and may from time to time enter therein any material alteration in the address or qualifications of the practitioners. The names of registered practitioners, who die or whose names are directed to be removed from the register under sub-section (3) of section 16 shall be removed from the register.

(4) A registered practitioner shall, on payment of such fees as may be prescribed, be entitled to have entered in the register any degrees, diplomas or certificates or other qualifications in homoeopathy or other recognised medical degrees, diplomas or certificates which he may obtain.

(5) For the purpose of this section, the Registrar may write by registered post to any registered practitioner at the address which is entered in the register to enquire whether he has ceased to practise or has changed his residence and, if no answer is received to such letter within six months, the Registrar may remove the name of such practitioner from the register:

Provided that if the Council is satisfied, on the application of such practitioner, that he has not ceased to practise, the Council may direct that the name of such practitioner be re-entered in the register.

Registration

16. (1) Every person, who possesses any qualification mentioned in Schedule-I, shall, subject to the provisions contained in this Act and on payment of the prescribed fees, be entitled to have his name entered in Part-A of the register subject to such conditions as the Council may by regulations specify.

(2) Every person, who, within a period of six months from the date on which this Act comes into force, proves to the satisfaction of the Registrar that immediately before the commencement of this Act he was not less than twenty-five years of age and had been in continuous practice as a practitioner for at least five years, shall, on payment of the prescribed fees, be entitled to have his name entered in Part-B of the register subject to such conditions as the Council may by regulations specify.

(3) No person,—

(a) who is registered or deemed to have been registered under the Punjab Medical Registration Act, 1916 or the Himachal Pradesh Ayurvedic and Unani Practitioners Act, 1968, shall be eligible for registration under sub-section (1) or sub-section (2) unless and until he ceases to be registered under those Acts; or

(b) who is registered or deemed to have been registered under sub-section (1) or sub-section (2), shall continue to be a registered practitioner under this Act, if subsequent to such registration he also gets himself registered under the Punjab Medical Registration Act, 1916, or the Himachal Pradesh Ayurvedic and Unani Practitioners Act, 1968.

(4) Where an application for entry in the register is made by a person whose case is not clearly covered by sub-section (1) or sub-section (2) or by the rules or regulations made under this Act, the Registrar shall refer his application to the Council for such decision as the Council may deem fit.

(5) The Council may direct that the name of any practitioner who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1973, which discloses such defect of a moral character as is, in the opinion of the Council, sufficient to make him unfit to practise his profession or who has been found, after due inquiry, guilty of conduct which is, in the opinion of the Council, infamous in any professional respect, shall be removed from the register.

(6) The Council may, on sufficient cause being shown, also direct that the name of the practitioner so removed shall be re-entered in the register on payment of such fees as may be prescribed.

17. (1) Any person aggrieved by the decision of the Registrar regarding registration of any person or any entry in the register may appeal to the Council.

Appeal to the Council from the decision of the Registrar and other powers of the Council.

(2) Such appeal shall be filed with, and shall be heard and decided by the Council in the manner prescribed.

(3) The Council may, on its own motion or on the application of any person, after due and proper enquiry and after giving an opportunity to the person concerned of being heard, cancel or alter any entry in the register if, in the opinion of the Council, such entry was fraudulently or incorrectly made.

18. Notwithstanding anything in any law for the time being in force,—

Qualified practitioner certificate.

(a) the expression “legally qualified medical practitioner”, or duly qualified medical practitioner, or any word importing a person recognised by law as a medical practitioner or a member of medical profession shall in all Acts or other provisions having the force of law in Himachal Pradesh and relating to matters in List II or List III of the Seventh Schedule to the Constitution of India, includes a practitioner registered in Part ‘A’ of the register;

(b) a certificate required by any Act to be issued by any medical practitioner or medical officer shall be valid if such certificate has been signed and issued by a practitioner registered in Part ‘A’ of the register;

Provided that a certificate of illness may be signed and issued by any practitioner registered in Part ‘B’ of the register;

(c) a practitioner registered in Part ‘A’ of the register shall be eligible to hold any appointment as a medical officer in any homoeopathic dispensary or hospital supported by or receiving a grant from the Government and treating patients according to the homoeopathic system or in any public establishment, body or institution dealing with such system.

19. Every Registrar of Deaths on receiving notice of the death of a registered practitioner shall forthwith transmit by post to the Registrar a certificate under his own hand of such death with the particulars of time and place of death and may charge the cost of such certificate and transmission as an expense of his office.

Notice of death.

20. (1) The Council may appoint such number of Inspectors to inspect the institutions and their examinations as it may deem fit and such Inspector shall be paid such fee as may be prescribed.

Inspection of institutions.

(2) Such Inspectors shall, in accordance with any general or special directions of the Council given from time to time, inspect the institutions established by or affiliated to the Council and report to the Council in regard to the courses of study pursued and training imparted at every institution, which they inspect and on any other matters with regard to which the Council may require them to report.

Qualifying
examina-
tions.

21. (1) The Council shall by regulations—

- (a) recognise institutions as required under paragraph (2) of Schedule-I;
- (b) prescribe the course of training and qualifying examinations including the examinations prior to qualifying examinations;
- (c) provide that instructions and examination shall as far as possible be given or held in the languages specified in the regulations.

(2) A qualifying examination shall be an examination in the homoeopathic system held for the purpose of granting a diploma, degree or certificate conferring the right of registration under this Act by any of the institutions which on the recommendations of the Council may be specified by the Government by notifications as being authorised to hold a qualifying examination.

(3) It shall be the duty of the Council to secure the maintenance of an adequate standard of proficiency for the practice of homoeopathic system. For the purpose of securing such a standard the Council shall have authority to call on the governing body or authorities of any institution giving instructions in the homoeopathic system and on any examining body authorised or desirous of being authorised under sub-section (2)—

- (a) to furnish such particulars as the Council shall require of any course of study prescribed by regulations or examination held by such body or authority or in any school or college thereof with reference to the grant of any qualifications; and
- (b) to permit Inspectors appointed by the Council from amongst the registered practitioners in this behalf to attend and be present at all or any of qualifying examinations.

(4) An Inspector shall not interfere with the conduct of any examination, but it shall be his duty to report to the Council his opinion as to the sufficiency or insufficiency of every examination which he attends and any other matter in relation to such examination on which the Council may require him to report.

(5) Every qualifying examination and every prior examination leading upto it held by the bodies or institutions authorised under this section shall be inspected by the Inspector at least once in two years and more frequently if the Council so directs.

(6) The Council shall forward a copy of every such report to the body which held the examination in respect of which the said report was made and shall also forward a copy of such report, together with any observations thereon made by the said body, to the Government.

Removal
of institu-
tion autho-
rised to
hold
qualifying
examina-
tions.

22. If it appears to the Government on the report of the Council that the courses of study and examinations prescribed by any of the institutions specified in the notification under section 21 are not such as to secure the maintenance of an adequate standard of proficiency for the practice of homoeopathic system it shall be lawful for the Government to direct by notification that the said institution shall be removed from the said notification and shall not be authorised to hold a qualifying examination:

Provided that, before any direction for the removal of an institution from the said notification is made under this section, the Council shall

require the institution to take steps within such time as it thinks fit to provide that the courses of study and examinations prescribed by the institution are of an adequate standard.

2 of 1974

23. Notwithstanding anything in any other law for the time being in force, every registered practitioner shall be exempted, if he so desires, from serving on any inquest under the Code of Criminal Procedure, 1973.

Exemption from service on inquest.

24. There shall be paid to the members for attending meetings of the Council such travelling and other allowances as may be prescribed.

Allowances payable to members.

25. All moneys received by the Council as fees under this Act shall be applied for the purposes of this Act in accordance with the rules made thereunder.

Fees received by the Council.

26. (1) The Registrar shall, at least once in every five years, on or before a date to be fixed by the Council, cause to be printed and published a correct list of the names and qualifications of all practitioners for the time being entered in the register and the dates when such qualifications were acquired.

Publication of list of practitioners.

(2) In any proceeding it shall be presumed that every person entered in such list is a registered practitioner and that any person not so entered is not a registered practitioner.

27. If at any time it appears to the Government that the Council has neglected to exercise, or has exceeded or abused, any of the powers conferred upon it by or under this Act or has neglected to perform any of the duties imposed upon it by or under this Act, the Government may, communicate the particulars of such neglect, excess or abuse to the Council, and if the Council fails to remedy such neglect, excess or abuse within such time as may be fixed by the Government in this behalf, the Government may, for the purpose of remedying such neglect, excess or abuse cause any of the powers and duties of the Council to be exercised and performed by such agency and for such period as the Government may think fit.

Control of the Government.

28. No person, other than a practitioner registered under this Act, shall practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise the homoeopathic system.

Prohibition of practice by persons not registered.

29. Whosoever voluntarily and falsely assumes or uses any title or description or any addition to his name implying that he holds a degree, diploma or certificate conferred, granted or issued by any of the institutions specified in the notification made under section 21, or that he is qualified to practise the homoeopathic system, or that he is a registered practitioner, shall on conviction be punishable with fine which may extend to two hundred and fifty rupees for the first offence and with fine which may extend to five hundred rupees for every subsequent offence.

False assumption of degrees etc. to be an offence.

30. Any person who acts in contravention of the provisions of section 28 shall, on conviction, be punishable with fine which may extend to two hundred rupees.

Penalty for the violation of the provisions of sections 28.

Conferring, granting or issuing degrees, diplomas, etc. by an authorised persons or institutions.

31. (1) No person, other than an association or institution recognised or authorised by the Council under this Act, shall confer, grant or issue or hold himself or itself out as entitled to confer, grant or issue any degree, diploma, certificate or other document stating or implying that the holder, grantee, or recipient is qualified to practise the homoeopathic system.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to five hundred rupees and if the person so contravening is an association, every member of such association, who knowingly and wilfully authorises or permits the contravention, shall, on conviction, be punishable with fine which may extend to two hundred rupees.

Court competent to try offences under this Act and cognizance of offences

32. (1) No court other than the court of a Judicial Magistrate of the 1st Class shall take cognizance of or try an offence under this Act.

(2) No court shall take cognizance of any offence under this Act except on a complaint in writing of an officer empowered by the Government in this behalf.

Power to amend Schedule II.

33. The State Government may by notification amend Schedule-I, so as to add thereto or omit therefrom any qualification, and thereupon such Schedule shall be deemed to have been amended accordingly.

PART III

DISPUTES REGARDING ELECTIONS

Definitions.

34. In this part, unless the context otherwise requires,—

- (a) "agent" means any person appointed in writing by a candidate at an election to be his agent for the purposes of his election with the written consent of such person;
- (b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at an election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate;
- (c) "corrupt practice" means any of the practices specified in Schedule-II;
- (d) "costs" means all costs, charges and expenses of, or incidental to, trial of an election petition;
- (e) "election" means an election to fill the office of a member;
- (f) "electoral right" means the right of a person to stand or not to stand, as, or to withdraw from being, a candidate or to vote or refrain from voting at an election;
- (g) "pleader" means any person entitled to appear and plead for another in a civil court, and includes an advocate.

Election petitions.

35. No election of a member shall be called in question except by an election petition presented in accordance with the provisions of this part.

Presentation of petitions.

36. (1) Any registered practitioner may within a period of thirty days from the date on which the election of any member is notified under sub-section (6) of section 3 and on furnishing the prescribed security in the prescribed manner, present on one or more of the grounds specified in sub-section (1) of section 48 to the prescribed authority an election petition in writing against the election of such member.

(2) The election petition shall be deemed to have been presented to the prescribed authority—

(a) when it is delivered to the prescribed authority—

(i) by the person making the petition, or

(ii) by the person authorised in writing in this behalf by the person making the petition, or

(b) when it is sent by registered post and is delivered to the prescribed authority.

37. (1) An election petition—

(a) shall contain concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings:

Contents
of petition.

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioners and verified in the same manner as the petition.

38. If the prescribed security is not furnished in the prescribed manner or the petition is not presented within the period specified in section 36, the prescribed authority shall dismiss the petition:

Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard.

Procedure
on receiving
election
petitions.

39. Any authority empowered in this behalf by the Government may, at any stage after notice to parties and for reasons to be recorded, withdraw any election petition pending before a prescribed authority and transfer it for trial to another prescribed authority; and upon such transfer, that prescribed authority shall proceed with the trial from the stage at which it was withdrawn:

Power to
withdraw
and trans-
fer petitions

Provided that such authority may, if it thinks fit, recall and re-examine any of the witnesses already examined.

40. (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the prescribed authority, as nearly as may be, in accordance with the procedure applicable, under the Code of Civil Procedure, 1908, to the trial of suits:

Procedure
before the
prescribed
authority.

Provided that the prescribed authority shall have the discretion to refuse for reasons to be recorded to examine any witness, or witnesses, if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of election petition.

1 of 1872

Appearance before the prescribed authority.

41. Any appearance, application or act before the prescribed authority may be made or done by the party in person or by a pleader duly appointed to act on his behalf:

Provided that it shall be open to the prescribed authority to direct any party to appear in person whenever the prescribed authority considers it necessary.

Powers of the prescribed authority.

42. The prescribed authority shall have the powers which are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of following matters:—

5 of 1908

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses;
- (c) requiring the deposit of their expenses;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit;
- (g) issuing commission for the examination of witnesses; and
- (h) compelling the production of documents;

and may summon and examine *suo moto* any person whose evidence appears to it to be material; and shall be deemed to be a civil court within the meaning of sections 345 (1) and 346 of the Code of Criminal Procedure, 1973.

2 of 1973

Explanation.—For the purpose of enforcing the attendance of witnesses the local limits of the jurisdiction of the prescribed authority shall be the limits of the State of Himachal Pradesh.

Documentary evidence.

43. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

Secrecy of voting not to be infringed.

44. No witness or other person shall be required to state for whom he has voted at an election.

Answering of incriminating questions and certificate of indemnity.

45. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition on the ground that the answer to such question may incriminate him or may tend to incriminate him, or that it may expose or may tend to expose him to any penalty or forfeiture:

Provided that—

- (a) a witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the prescribed authority; and
- (b) an answer given by a witness to a question put by or before the prescribed authority shall not, except in the case of any Criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness it may be pleaded by him in any court and shall be a full and complete defence

45 of 1860

to or upon any charge under Chapter 'IX-A' of the Indian Penal Code arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with any election imposed by this Act or any other law.

46. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the prescribed authority to such person, and shall, unless the prescribed authority otherwise directs, be deemed to be part of the costs.

Expenses of witnesses.

47. (1) When an election petition has not been dismissed under section 38, the prescribed authority shall inquire into the election petition and at the conclusion of the inquiry shall make an order—

Decision of the prescribed authority.

- (a) dismissing the election petition; or
- (b) setting aside the election.

(2) At the time of making an order under sub-section (1) the prescribed authority shall also make an order—

- (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—
 - (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of that corrupt practice; and
 - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and
- (b) fixing the total amount of cost payable, and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—

- (i) he has been given notice to appear before the prescribed authority and to show cause why he should not be so named; and
- (ii) if he appears in pursuance of the notice, he has been given an opportunity of cross examining any witness who has already been examined by the prescribed authority and has given evidence against him, of calling evidence in his defence and of being heard:

48. (1) If the prescribed authority is of the opinion—

Grounds for setting aside election.

- (a) that on the date of his election the elected person was not qualified, or was disqualified, to be elected under this Act; or
- (b) that any corrupt practice has been committed by the elected person or his agent or by any other person with the consent of the elected person or his agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns the elected person, has been materially affected—
 - (i) by the improper acceptance of any nomination; or
 - (ii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iii) by any non-compliance with the provisions of this Act or of any rules made under this Act;

it shall set aside the election of the elected person.

(2) When an election has been set aside under sub-section (1), a fresh election shall be held.

Abatement
of Election
petition.

49. An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

Costs and
payment
thereof out
of security
deposits
and return
of such
deposits.

50. (1) Costs including pleader's fee shall be in the discretion of the prescribed authority.

(2) If in any order as to costs under the provisions of this part there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit made by such party under this part, on an application made in writing in that behalf within a period of one year from the date of such order to such authority as may be empowered in this behalf by the Government by the person in whose favour the costs have been awarded.

(3) If there is any balance left of the security deposit under this part after payment under sub-section (2) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of one year, the whole of the said security deposit may, on an application made in that behalf in writing to the authority referred to in sub-section (2) by the person by whom the security has been deposited, or if such person dies after making such deposit, by the legal representatives of such person, be returned to the said person or to his legal representatives, as the case may be.

Execution
of orders as
to costs.

51. Any orders as to costs under the provisions of this part may be produced before the principal civil court within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such cost or any portion thereof may be recovered by an application made under sub-section (2) of section 50, no application shall lie under this section within a period of one year from the date of such order unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposit referred to in that sub-section.

Corrupt
practices
entailing
disqualifi-
cation.

52. The corrupt practices specified in Schedule-II shall entail disqualification for membership of the Council for a period of five years counting from the date on which the finding of the prescribed authority as to such practice has been given:

Provided that the Government may, for reasons to be recorded, remove the disqualification or reduce the period thereof.

PART IV
MISCELLANEOUS

53. (1) The Government may, by notification and after previous publication, make rules to carry out all or any of the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Government may make rules for all or any of the following matters, namely:—

- (a) the time at which and the place and manner in which election shall be held under section 4;
- (b) the salary, allowances and other conditions of service of the Registrar under section 14;
- (c) the form of the register and the particulars to be entered therein under section 15;
- (d) the fees chargeable for registration, registration certificate, re-entries of a removed name and alteration of entries in the register;
- (e) the manner in which appeals against the decision of the Registrar shall be heard by the Council under section 17;
- (f) the travelling and other allowances payable to members under section 24;
- (g) the application of fees under section 25;
- (h) the furtherance of any of the objects of the Council;
- (i) the form of the certificates of registration mentioning therein the part in which the registered practitioner is registered;
- (j) the amount of security to be furnished and the manner in which it is to be furnished as required by sub-section (1) of section 36;
- (k) the authority to whom election petitions may be presented and by whom such petitions may be inquired into and decided under Part III;
- (l) the form of affidavit required to accompany the petition under sub-section (1) of section 37; and
- (m) any other matter which may be prescribed.

54. (1) The Council may, with the previous sanction of the Government, make regulations not inconsistent with this Act or the rules made under section 53 for all or any of the following matters, namely:—

Regulations.

- (a) the time and place at which the Council shall hold its meetings under section 12;
- (b) the salary, allowances and other conditions of service of officers and servants of the Council, other than the Registrar, under section 14;
- (c) the conditions for registration referred to in sub-sections (1) and (2) of section 16;
- (d) the course of study for training and qualifying and other examinations;
- (e) the admission of students to the bodies or institutions authorised under section 21;
- (f) the language in which the examinations shall be conducted and instructions shall be imparted;
- (g) the conditions under which students shall be admitted to the degree, diploma or certificate course and to the qualifying and prior examinations;
- (h) the conditions of appointment of examiners and the conduct of examinations; and

- (i) all other matters which may be necessary for the purposes of carrying out the objects of this Act.
- (2) All regulations shall be published in the Official Gazette.
- (3) The Government may by notification cancel any regulation:

Provided that in submitting regulations under clauses (d) and (h) for sanction of the Government under this section, the Council shall send a copy of its proceedings relating to the passing of such regulations and shall state the number of its members who have voted for or against such regulations or not voted in respect of such regulations:

Provided further that in sanctioning the regulations due consideration shall be given to the opinion of the members as expressed in the said proceedings.

55. Every rule or regulation made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or regulation, as the case may be, or decides that the rule or regulation should not be made, the rule or regulation shall thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or an annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

56. (1) The Punjab Homoeopathic Practitioners Act, 1965, as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Reorganisation Act, 1966, is hereby repealed:

16 of 1965

31 of 1966

Provided that the repeal of any such enactment shall not affect—

- (a) the previous operation of such enactment or anything duly done or suffered thereunder, or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under such enactment, or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against such enactment, or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the proviso to sub-section (1), anything done or any action taken (including any appointment or delegation made, notification, order, instruction or direction issued, rules and regulations framed) under the enactment repealed by sub-section (1) shall, in so far as it is not inconsistent with this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act.

(3) Without prejudice to the general application of the provisions of sub-sections (1) and (2), the assets and liabilities immediately before the 1st November, 1966, of the Council constituted under section 3 of the Punjab Homoeopathic Practitioners Act, 1965, which by virtue of any agreement

16 of 1965

Rules and regulations to be laid before State Legislature.

Repeal and savings.

or otherwise under the Punjab Re-organisation Act, 1966, may devolve on the Union, shall, if the Government so directs, become the assets and liabilities of the Council.

31 of 1966

57. If any difficulty arises in giving effect to the provisions of this Act, the Government may by order published in the Official Gazette, make such provisions or give such directions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the removal of such difficulty.

Power to remove difficulty.

SCHEDULE—I

[See sections 3 (3) and (5), 16 (1), 21 (1) (a) and 33]

Persons who are entitled to have their names entered in Part 'A' of the register of the practitioners of homoeopathic system of medicines:—

- (1) Homoeopaths who have passed the final examinations held by the Council of the Homoeopathic System of Medicines, Himachal Pradesh.
- (2) Homoeopaths who have passed an examination from the recognised homoeopathic institution in Himachal Pradesh or have got diploma, degree from the institutions situated outside Himachal Pradesh; provided such diploma and degree is recognised by the Council.
- (3) Homeopaths who have been registered by the State Council or Board of Homoeopathic System of Medicines established by law anywhere in the Indian Union by virtue of their having passed a qualifying examination from any of the recognised institutions of such Council or Board.

SCHEDULE—II

[See sections 34 (c) and 52]

The following shall be deemed to be corrupt practices for the purposes of section 52:—

(1) bribery, that is to say—

- (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his agent of any gratification, to any person whomsoever with the object, directly or indirectly of inducing—
 - (a) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or
 - (b) a voter to vote or refrain from voting at an election or as a reward to—
 - (i) a person for having so stood or not stood, or for having withdrawn his candidature; or
 - (ii) a voter for having voted or refrained from voting;
- (B) the receipt of or, agreement to receive, any gratification whether as a motive or a reward—
 - (a) by a person for standing or not standing as, or, for withdrawing from being, a candidate; or

- (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any voter to vote or refrain from voting, or any candidate to withdraw his candidature.

Explanation.—For the purpose of this clause—

- (1) the term “gratification” is not restricted to pecuniary gratification or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward, but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election.
- (2) “undue influence”, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his agent, with the free exercise of any electoral right: Provided that—
 - (a) without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who—
 - (i) threatens any candidate or a voter or any person in whom a candidate or such voter is interested, with injury of any kind and including social ostracism and *ex-communication* or expulsion from any caste or community; or
 - (ii) induces or attempts to induce a candidate or a voter to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;
shall be deemed to interfere with free exercise of the electoral right of such candidate or a voter within the meaning of this clause;
 - (b) a declaration of public policy, or a promise of publication or the mere exercise of legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.
- (3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.
- (4) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language by a candidate or his agent or any other person with the consent of a candidate or his agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.
- (5) The publication by candidate or his agent or by any other person with the consent of a candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or

conduct of any candidate or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

- (6) The hiring or procuring whether on payment or otherwise of any vehicle by a candidate or his agent or by any other person with the consent of a candidate or his agent for the conveyance of any voter (other than the candidate himself, the member of his family or his agent), to or from any polling station provided or a place fixed for the poll:

Provided that the hiring of vehicle by a voter or by several voters at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause, if the vehicle so hired is a vehicle not propelled by mechanical power:

Provided further that the use of any public transport vehicle by any voter at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression “vehicle” means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

- (7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government, the Government of India or the Government of any other State or a local authority.

STATEMENT OF OBJECTS AND REASONS

The Punjab Homoeopathic Practitioners Act, 1965 is in force, in the areas transferred to Himachal Pradesh by virtue of the provisions of section 5 of the Punjab Re-organisation Act, 1966. Under this Act, it is obligatory on this Government to constitute a "Council of Homoeopathic System of Medicines, Himachal Pradesh" for the said area, but no such law is in force in the areas which comprised in Himachal Pradesh immediately prior to the said re-organisation. With a view to have uniformity throughout the Pradesh, it has been considered desirable that we may constitute our own Council of Homoeopathic System of Medicines, catering to the whole of Himachal Pradesh rather than have a Homoeopathic Council for the integrated area only. In order to achieve this purpose the Himachal Pradesh Homoeopathic Practitioners Bill, 1976 (Bill No. 24 of 1976) was introduced in the previous Vidhan Sabha and with the dissolution of the previous Vidhan Sabha, the said Bill stands lapsed under clause (5) of Article 196 of the Constitution of India. As such a new Bill is required to be introduced.

Hence this Bill seeks to achieve aforesaid objects.

SHANTA KUMAR,
Chief Minister.

SIMLA:
The 22nd March, 1979.

FINANCIAL MEMORANDUM

Under clause 3 of the Bill, the Government is required to constitute a Council of Homoeopathic System of Medicines, Himachal Pradesh, which is contemplated to consist of eight members. Though the Council is expected to become viable in course of a few years yet some expenditure on account of T.A./D.A. of members of the Council shall have inevitably to be incurred for a few years. It is, therefore, necessary that a grant-in-aid on a recurring basis will have to be sanctioned to the tune of Rs. 12,000 per annum, to meet such expenditure from the funds of the State Exchequer.

MEMORANDUM ON DELEGATED LEGISLATION

Clause 53 of the Bill provides for framing of rules by the Government for matters provided therein. The proposed delegation is normal in character. Clause 54 provides for the making of regulations by the Council with the previous sanction of the Government. The rules and regulations shall be laid before the Legislative Assembly as soon as may be after they are made as per clause 55.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

(Health and Family Welfare Department File No. 11-2/71-H&FW)

The Governor having been informed of the subject matter of the Himachal Pradesh Homoeopathic Practitioners Bill, 1979 recommends, under Article 270 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly of Himachal Pradesh.

शिमला-171004, 23 मार्च, 1979

संख्या 1-33/79-वि०स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973, के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश वेट्स एण्ड

मेयज़र बिल, 1979 (बिल नम्बर 9 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 23 मार्च, 1979 को पुरःस्थापित किया गया है, सर्वसाधारण की सूचनार्थ, राजपत्र में मद्रित करने के लिए प्रेषित किया जाता है ।

वेद प्रकाश भटनागर,
सचिव ।

Bill No. 9 of 1979.

THE HIMACHAL PRADESH WEIGHTS AND MEASURES BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to provide for the enforcement of the standards of weights and measures established by or under the Central Act and for matters connected therewith or incidental thereto.

BE it enacted by the Legislative Assembly, Himachal Pradesh in the Thirtieth Year of the Republic of India, as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Himachal Pradesh Weights and Measures Act, 1979.

(2) It extends to the whole of Himachal Pradesh.

(3) It shall come into force on such date as the Government may, by notification, appoint and different dates may be appointed for different,

(a) provisions of this Act,

(b) areas,

(c) classes of undertakings,

(d) classes of goods,

(e) classes of weights and measures, or

(f) classes of users of weights and measures,

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision in such areas, or in respect of such classes of undertakings, goods, weights and measures or users of weights and measures in relation to which this Act has been brought into force.

2. Nothing in this Act shall apply to any inter-State trade or commerce in any weight or measure or in any other goods which are sold, delivered or distributed by weight, measure or number.

3. In this Act, unless the context otherwise requires,—

(a) “Additional Controller” includes a Joint Controller, Deputy Controller and an Assistant Controller appointed under section 5;

(b) “authorised seal or stamp” means a seal or stamp made under, and in accordance with, the provisions of this Act;

(c) “central Act” means the Standards of Weights and Measures Act, 1976;

(d) “Controller” means the Controller appointed by the Government under section 5;

(e) “counterfeit” in relation to a seal or stamp, means a seal or stamp which is so made as to resemble an authorised seal or stamp, as the case may be, intending by that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised;

Short title,
extent and
commence-
ment.

Act not to
apply to
inter-State
trade or
commerce.
Definitions.

Explanation.—1. It is not essential that the resemblance of the counterfeit seal or stamp to the authorised seal or stamp should be exact.

Explanation 2.—When a person causes a counterfeit seal or stamp to resemble an authorised seal or stamp and the resemblance is such that if a person relies on such seal or stamp, he might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the seal or stamp to resemble the authorised seal or stamp intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised;

- (f) “Government” or “State Government” means the Government of Himachal Pradesh;
- (g) “heap” means any unit of a commodity for sale where such sale is intended to be made without any weightment or measurement or, where the sale is made by number, without counting the number;
- (h) “Inspector” means a person who is appointed as such under section 5, by whatever name called;
- (i) “mint” means a mint of the Central Government;
- (j) “notification” means a notification published in the Rajpatra, Himachal Pradesh;
- (k) “Official Gazette” means Rajpatra, Himachal Pradesh;
- (l) “prescribed” means prescribed by rules made under this Act;
- (m) “protection” means the utilisation of any weight or measure, or any reading obtained with the help of any weight or measure, for the purpose of determining whether or not any step is required to be taken to safeguard the well being of any human being or animal, commodity, vegetation or thing, whether individually or collectively;
- (n) “standard weight or measure” means a weight, measure or number which conforms to the standards established in relation thereto by or under the central Act; and
- (o) words and expressions used in this Act and not defined but defined in the central Act shall have the meanings respectively assigned to them in that Act.

Provisions of this Act to override the provisions of any other law except the central Act.

4. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act and the central Act or in any instrument having effect by virtue of any enactment other than this Act or the central Act.

CHAPTER II

APPOINTMENT OF CONTROLLERS, INSPECTORS AND OTHER OFFICERS

Appointment of Controllers, Inspectors and other officers.

5. (1) The Government may, by notification, appoint a Controller for the State and as many Additional, Joint, Deputy or Assistant Controllers, Inspectors and other Officers and staff as may be necessary for exercising the powers and efficiently discharging the duties conferred or imposed on them by or under this Act.

(2) Every Additional Controller, appointed under sub-section (1), shall exercise such powers, and discharge such functions, of the Controller, as the State Government may, by notification, authorise in this behalf.

(3) The Controller may, by general or special order, define the local limits within which each Additional Controller or each Inspector shall

exercise the powers and discharge the duties conferred or imposed on him by or under this Act.

(4) Subject to the provisions of this Act, every Additional Controller and every Inspector shall perform his functions and discharge the duties of his office under the general superintendence, directions and control of the Controller and shall exercise those powers and discharge those duties in the same manner and with the same effect as if they had been conferred or imposed on him direct by or under this Act and not by way of authorisation.

(5) The Controller and every Additional Controller may also—

(a) perform all or any of the functions of, and

(b) exercise all or any of the powers conferred by this Act or any rule or order made thereunder, on, an Inspector.

6. Where the Controller is of opinion that it is necessary so to do, he may, by an order in writing, authorise an Inspector, or other officer not below the rank of an Inspector, to adjust any weight or measure in any area within the local limits of his jurisdiction.

Power to authorise Inspector to adjust weights or measures.

7. The Controller and every Additional Controller, and every Inspector and every other person authorised to perform any duty by or under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Controller and officers appointed under this Act to be public servants.

8. No suit, prosecution or other legal proceeding shall lie against the Controller, any Additional Controller, or any Inspector or any other persons authorised to perform any duty by or under this Act in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

Protection of action taken in good faith.

CHAPTER III

GENERAL PROVISIONS IN RELATION TO STANDARD WEIGHTS AND MEASURES

9. (1) Notwithstanding any custom, usage or method of whatever nature, no weight or measure other than the standard weight or measure shall be used or kept in any premises within the State of Himachal Pradesh in such circumstances as to indicate that such weight or measure is intended, or is likely, to be used for any weightment or measurement.

Prohibition of use of weights and measures other than standard weights and measures.

(2) Any custom, usage, practice or method of whatever nature which permits a person to demand, receive, or cause to be demanded or received, within the State of Himachal Pradesh, any quantity of article, thing or service in excess of, or less than, the quantity specified by weight or measure in the contract or other agreement in relation to the said article, thing or service shall be void.

(3) On and from the commencement of this Act, no weight, measure or number, other than the standard weight, measure or number, shall be used in, or form the basis of, any contract or other agreement in relation to any trade or commerce within the State of Himachal Pradesh.

(4) Any contract or other agreement, which contravenes the provisions of sub-section (3) shall be void.

10. (1) The Government may, by rules made in this behalf, direct that in respect of class of goods or undertakings or users specified therein—

Use of weights only or measures only in certain cases.

(a) no transaction, dealing or contract shall be made or had, or

(b) no industrial production shall be undertaken, or

(c) no use for protection shall be made, within the State of Himachal Pradesh.

Pradesh, except by such weight, measure or number as may be specified in the said rules.

(2) Any rule made under sub-section (1) shall take effect in such area, from such future date and subject to such conditions, if any, as may be specified therein.

Prohibition of quotations, etc., otherwise than in terms of standard units of weight, measure or numeration.

11. Except where he is permitted under the central Act so to do, no person shall, in relation to any goods or things which are sold, transferred, distributed or delivered, or any service rendered, within the State of Himachal Pradesh,—

- (a) quote, or make announcement of, whether by word of mouth or otherwise, any price or charge, or
- (b) issue or exhibit any price list, invoice, cash memo or other document, or
- (c) prepare or publish any advertisement, poster or other document, or
- (d) indicate the contents of any package either on itself or on any label, carton or other thing, or
- (e) indicate the contents on any container, or
- (f) express, in relation to any transaction, industrial production or protection, any quantity of dimension, otherwise than in accordance with the standard units of weight, measure or numeration.

CHAPTER IV CUSTODY AND VERIFICATION OF STANDARD EQUIPMENTS

Custody and verification of reference standards.

12. Every reference standard, supplied by the Central Government to the State Government, shall be kept at such place and in such custody as may be prescribed, and no such reference standard shall be deemed to be a reference standard and shall be used as such unless it has been verified and authenticated in accordance with the rules made under the central Act.

Preparation of secondary and working standards.

13. The State Government may cause to be prepared at a mint as many sets of secondary standard or working standard, verified and authenticated by the mint in such manner as may be specified under the central Act, as it may think necessary:

Provided that where the mint intimates the State Government in writing that it is unable to prepare secondary standard or working standard weight or measure, the State Government may cause such secondary standard or working standard weight or measure to be prepared by such person as it may think fit and such secondary standard or working standard weight or measure shall be verified and authenticated by such authority as may be specified by rules made under this Act and every such verification and authentication shall be made in the manner specified under the central Act.

Verification, stamping and custody of secondary or working standards.

14. (1) Every secondary standard or working standard shall conform to the standards established by or under the central Act and shall be verified with the reference standard or secondary standard, as the case may be, in such manner and at such periodical intervals as may be specified by or under that Act, and shall, if found on such verification to conform to the standards established by or under that Act, be stamped.

(2) Where any secondary standard or working standard is stamped under sub-section (1), a certificate shall be separately issued showing the date on which such weight or measure was stamped.

(3) Every verification and stamping referred to in sub-section (1) shall be made by such person or authority as may be prescribed.

(4) A secondary standard or working standard which is not certified and stamped in accordance with the provisions of sub-section (1) shall not be deemed to be a secondary standard or working standard, as the case may be, and shall not be used for the verification of any working standard or as the case may be, of any weight or measure, not being a national prototype or reference standard or secondary standard.

(5) Every secondary standard shall be kept at such place and in such custody as may be prescribed.

15. Where State Government is of opinion that by reason of the size or nature of any secondary standard or working standard, it is not desirable or practicable to put a stamp thereon, it may direct that instead of putting a stamp on such secondary standard or working standard, a certificate may be issued to the effect that such secondary standard or working standard conforms to the standards established by or under the central Act and every secondary standard so certified shall be deemed to have been duly stamped under this Act on the date on which such certificate was issued.

Secondary or working standard which may not be stamped.

CHAPTER V MANUFACTURE, REPAIR OR SALE OF WEIGHTS OR MEASURES

16. (1) No person shall make, manufacture, repair or sell any weight or measure unless he holds a valid licence issued in this behalf by the Controller authorising such person to do so:

Provided that a person who *bona fide* repairs in his premises any weight of measure owned by him shall not be required to take out a licence referred to in this sub-section if he, in the opinion of the Controller,—

- (a) has the technical competence and the necessary equipment to repair such weight or measure, or
- (b) having the necessary equipment for the repair of such weight or measure in his possession, has persons in his employment who have the technical competence to repair such weight or measure.

(2) Every licence issued under this section—

- (a) shall be in such form as may be prescribed,
- (b) shall be issued on payment of such fees as may be prescribed,
- (c) shall be valid for such period as may be specified therein,
- (d) may be renewed from time to time, and
- (e) may contain such conditions and restrictions as may be prescribed.

(3) Every licence issued under the Himachal Pradesh, Weights and Measures (Enforcement) Act, 1968, shall, if in force immediately before the commencement of this Act, continue to be in force until the expiry of the period of its validity or until the cancellation thereof, whichever is earlier, and may be renewed under this Act if an application for its renewal is made in the prescribed form at least one month before the expiry of the period of its validity.

(4) A person who intends to commence, after the commencement of this Act, business as a maker, manufacturer, repairer or seller of any weight or measure, shall make an application in such form as may be prescribed, for the issue of a licence and every licence so issued may be renewed if an application for its renewal is made in the prescribed form at least one month before the expiry of the period of its validity.

(5) The Controller may, if he is satisfied that the maker, manufacturer repairer or seller, as the case may be, of any weight or measure was prevented by sufficient cause from making an application for the renewal of his licence

Prohibition on the manufacture, repair or sale of weights or measures without licence.

within the period specified in sub-section (4), permit him to make the application within a further period of one month from the date of expiry of the said period on payment by him of such further fee, not exceeding the fee which is payable for the issue of the licence.

(6) On receipt of an application for the issue of a licence under this section, the Controller may, if he is satisfied, after making such inquiry as he may think fit, that the applicant fulfils the prescribed conditions, issue such licence:

Provided that no application for the issue of a licence shall be rejected unless the applicant has been given a reasonable opportunity of making representation against the proposed action.

(7) No application for the renewal of a licence issued under this section shall be rejected unless—

(a) the holder thereof has been given a reasonable opportunity of showing cause against the proposed action, and

(b) the Controller is satisfied that—

(i) the applicant has not been made within the time specified in this section, or

(ii) the applicant has made any statement in, or in relation to, the application for the issue or renewal of the licence which is incorrect or false in any material particular, or

(iii) the applicant has contravened any provision of the central Act or any rule made thereunder or of this Act or any rule made thereunder.

(8) The Controller may require every repairer licensed under this Act to furnish to the State Government security for such sum, not exceeding two thousand rupees, as may be prescribed, to enable that Government to compensate any owner of weight or measure for any loss or damage occasioned by such repairer.

(9) Nothing in this section shall apply to the sale by a user (who is not a maker, manufacturer, dealer or repairer) of any weight or measure of such description as may be prescribed.

(10) Every licence issued or renewed under this Act shall be displayed in a conspicuous place in the premises where the licensee carries on his business.

Suspension
and cancellation
of
licence.

17. (1) The Controller, if he has any reasonable cause to believe that the holder of any licence issued, renewed or continued under this Act has made any statement in, or in relation to, any application for the issue or renewal of the licence which is incorrect or false in any material particular or has contravened any provision of the central Act or any rule made thereunder or of this Act or any rule made thereunder, suspend such licence, pending the completion of any inquiry or trial against the holder of such licence:

Provided that no such licence shall be suspended unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(2) The Controller may, if he is satisfied after making such inquiry as he may think fit that the holder of a licence has made a false or incorrect statement of the nature referred to in sub-section (1), or has contravened any law referred to in that sub-section, cancel such licence:

Provided that no such licence shall be cancelled unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(3) Every person whose licence has been suspended shall, immediately

after such suspension, stop functioning as such licensee and shall not resume business as such licensee until the order of such suspension has been vacated.

(4) Every licensee whose licence has been suspended or cancelled shall, immediately after such suspension or cancellation, as the case may be, surrender such licence to the authority by which such licence was issued.

(5) Every licensee whose licence has been cancelled shall, within a period of thirty days from the date of such cancellation (or within such further period, not exceeding three months from such date, as the Controller may, on sufficient cause being shown, allow), dispose of the weights or measures which were in his possession, custody or control on the date of such cancellation, and in the event of his failure to do so, the Controller or any other officer authorised by him, in writing, in this behalf may seize and dispose of the same and distribute the proceeds thereof in such manner as may be prescribed.

18. Save as otherwise provided in the central Act, no person shall—

Manufacture of weights and measures.

(a) make or manufacture any weight or measure unless such weight or measure conform to the standards established by or under the central Act;

(b) make or manufacture any weight or measure with indications thereon of any weight or measure other than the units specified by or under the central Act.

19. No weight or measure which is required by or under this Act to be verified and stamped shall be sold, used or kept for use unless it has been verified and stamped.

Prohibition of sale or use of unstamped weights or measures.

20. (1) Every maker, manufacturer, repairer or dealer and every person using any weight or measure in transaction or for industrial production or for protection shall maintain such records and registers as may be prescribed, and, if required so to do by an Inspector, shall produce such records and registers before the Inspector for inspection.

Manufacture, etc. to maintain records and registers.

(2) Notwithstanding anything contained in sub-section (1), if the Controller is of opinion that having regard to the nature or volume of the business carried on by any maker, manufacturer, dealer, repairer or user of any weight or measure, it is necessary so to do, he may, by order, exempt such maker, manufacturer, dealer, repairer or user from the operation of that sub-section.

CHAPTER VI

VERIFICATION AND STAMPING OF WEIGHTS OR MEASURES

21. (1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended to be, used by him in any transaction or for industrial production or for protection, shall, before putting such weight or measure into use, have such weight or measure verified at such place, and during such hours as the Controller may, by general or special order, specify in this behalf (hereinafter referred to as the "specified place" or "specified time").

Verification and stamping of weights or measures.

(2) Every weight or measure referred to in sub-section (1) shall be re-verified at such periodical intervals as may be prescribed.

(3) Every Inspector shall, for the purpose of verification of any weight or measure, attend the specified place (within the local limits of his jurisdiction) at the specified time and verify every weight or measure which is

brought to him at such place and within such time and shall, if he is satisfied that such weight or measure conforms to the standards established by or under the central Act, put his stamp thereon:

Provided that where any weight or measure is such that it cannot, or should not, be moved from its location, the Inspector shall take such steps for the verification of such weight or measure as may be prescribed.

(4) Where any verification has been made under sub-section (3) the Inspector shall grant to the person referred to in sub-section (1) a certificate in the prescribed form indicating therein the particulars of the weight or measure verified and stamped by him.

(5) Where the Controller is of opinion that by reason of the size or nature of any weight or measure, it is not desirable to put a stamp thereon, he may, by an order, in writing, direct that instead of putting a stamp on such weight or measure, a certificate may be issued to the effect that such weight or measure conforms to the standards established by or under the central Act and every weight or measure so certified shall be deemed to have been duly verified and stamped under this Act.

Display of
certificate of
verification.

22. Every certificate of verification granted under this Act shall be displayed in a conspicuous place in the premises where such weight or measure is being, or is intended to be, used in any transaction or for industrial production or for protection.

Validity of
weights or
measures
duly stamped.

23. (1) A weight or measure which is, or is deemed to be, duly verified and stamped under this Act shall be deemed to conform to the standards established by or under the central Act at every place within the State of Himachal Pradesh unless it is found on inspection or verification that such weight or measure does not conform to the standards established by or under that Act.

(2) No weight or measure which is, or is deemed to be, duly verified and stamped under this Act shall require to be re-stamped merely by reason of the fact that it is being used at any place within the territory of the State of Himachal Pradesh other than the place at which it was originally verified and stamped:

Provided that where a verified weight or measure, installed at one place, is dismantled and re-installed at a different place, such weight or measure shall not be put into use unless it has been re-verified and stamped, notwithstanding that periodical re-verification of such weight or measure has not become due.

CHAPTER VII

INSPECTION, SEARCH, SEIZURE AND FORFEITURE

Power to
inspect,

24. (1) An Inspector may, within the local limits of his jurisdiction, inspect and test, at all reasonable times, any weight or measure which—

- (i) is being, or is intended to be, used, or
- (ii) is in the possession, custody or control of any person, or
- (iii) is in or on any premises, in such circumstances as to indicate that such weight or measure is being, or is intended or likely to be, used in any transaction, or for any industrial production or for protection, and may also verify whether such weight or measure is in conformity with the standards established by or under the central Act.

(2) For the purpose of ascertaining the correctness of any weight or measure used in any transaction, the Inspector may also test the weight or measure of any article sold or delivered to any person in the course of such transaction.

25. (1) An Inspector may, if he has any reasonable cause to believe that an offence punishable under this Act has been, or is likely to be, committed in respect of any weight or measure does not conform to the standards established by or under the central Act, require, at all reasonable times, the person having the custody or control of such weight or measure to produce before him for inspection every such weight or measure which—

Power of Inspector to require production of weight or measure or records for inspection.

(i) is used by such person or is caused by such person to be used by any other person, or

(ii) is in the possession, custody or control of any person for use, or

(iii) is kept in or on any premises, for use in any transaction or for industrial production or for protection.

(2) The Inspector may also require the production of every document or other record relating to the weight or measure referred to in sub-section (1) and the person first mentioned in that sub-section shall comply with such requisition.

(3) On inspection, whether under section 24 or under this section, the Inspector may obliterate the stamp on any weight or measure—

(a) which does not, or cannot be made to, conform to the standards established by or under the central Act:

Provided that where the Inspector is of opinion that the defect or error in such weight or measure is not such as to require immediate obliteration of the stamp, he shall serve a notice on the user of such weight or measure informing him of the defect or error found in the weight or measure and calling upon him to remove the defect or error within such time, not exceeding eight days, as he may specify and shall—

(i) if the user fails to remove the defect or error within that period obliterate the stamp, or

(ii) if the defect or error is so removed as to make the weight or measure conform to the standards established by or under the central Act, verify such weight or measure and put his stamp thereon;

(b) which does not admit of proper adjustment owing to its being broken, indented or otherwise defective;

(c) which, since the last verification and stamping, has been repaired or re-adjusted but does not, after such repair or re-adjustment conform to the standards established by or under the central Act;

(d) which, being due for verification, has not been submitted for such verification.

26. (1) An Inspector may, if he has any reason to believe, whether from any information given to him by any person and taken down by him in writing or from personal knowledge or otherwise, that an offence punishable under this Act has been, or is likely to be, committed in relation to any weight, measure or other goods which are sold, delivered or distributed by

Power of Inspector to enter premises.

weight, measure or number, enter, at all reasonable times, into any premises—

- (i) where such weight or measure is used, or kept or believed to be kept for use, in any transaction or for industrial production or for protection,
 - (ii) where such goods are manufactured, packed, distributed or sold or kept or offered for sale in packaged form,
- and inspect or verify any weight or measure or the net contents, by weight, measure or number, of any package, and may also examine any document or other record relating thereto.

(2) An Inspector may at all reasonable times enter into any premises for such purposes other than those specified in sub-section (1), as may be prescribed.

Power to search.

27. (1) Where the Controller has reason to believe that any weight or measure, liable to be seized under this Act, or any document or thing in relation to any weight or measure, will be, in his opinion useful for, or relevant to, any proceeding under this Act, is secreted in any place, he may search or authorise any officer, not below the rank of an Inspector, to search for such weight or measure, document or thing, and the provisions of section 100 of the Code of Criminal Procedure, 1973 shall apply to every such search.

2 of 1974

(2) Every authorisation made by the Controller under sub-section (1) shall be deemed to be warrant referred to in section 100 of the Code of Criminal Procedure, 1973.

2 of 1974

Power of Inspector to seize any weight or measure.

28. (1) An Inspector may seize and detain any weight or measure in relation to which an offence under this Act appears to have been committed or which is likely to be used in the commission of such offence, and may also seize and detain any goods sold or delivered, or cause to be sold or delivered, by such weight or measure:

Provided that where any goods seized under this sub-section are subject to speedy or natural decay, the Inspector may dispose of such goods in such manner as may be prescribed.

(2) Where any weight or measure or any article is seized or detained under sub-section (1), the Inspector may also seize and detain any document or other record relating to such weight, measure or article.

Inspector to re-seal packages where net contents are found to have been correctly stated.

29. If, on verification of any commodity in packaged form, the net weight, measure or number or commodity contained in the package or container is found to agree with the net contents thereof, as stated on the label thereon, the Inspector shall, where the person from whom such commodity was obtained for verification is—

- (a) the manufacturer or packer of such commodity, get the commodity re-sealed or re-packed, as the case may be, or
- (b) a person who buys or sells such commodity, in wholesale or retail, acquire such package or container on payment in cash to such wholesaler or retailer the market price of the commodity contained in such package or container.

Forfeiture

30. Every false or unverified weight or measure seized under the provisions of this Act shall be liable to be forfeited to Government.

CHAPTER VIII

PROVISIONS WITH REGARD TO COMMODITIES IN PACKAGED FORM SOLD OR DISTRIBUTED WITHIN THE STATE

31. (1) The provisions of the Central Act with regard to the commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, packed, sold, kept, offered or exposed for sale in the State of Himachal Pradesh as if those provisions were applicable to trade or commerce within that State subject to the modification that any reference therein to the Central Government and the Central Act shall be construed as references, respectively, to the Government and this Act.

Provisions of the Central Act relating to packaged commodities to apply to packaged commodities sold or distributed within the State.

(2) An Inspector may, from time to time, inspect the weight or measure, or count the number of the commodity contained in any package which is—

- (i) kept at any place where the commodity is packed, or
- (ii) kept, offered or exposed for sale, or
- (iii) sold, delivered, held in possession or is in the process of delivery, within the State of Himachal Pradesh with a view to determining whether the package contains the quantity or number of the commodity as specified on it or on the label thereon.

(3) Where the Inspector finds, after weighing, measuring or counting, that any package does not contain the quantity or number of the commodity, as specified on it or on the label thereon, or does not conform to the provisions of the Central Act or any rule or order made thereunder, he may seize such package and may also, by order, prohibit the sale of each package which is similar to the seized package and may so mark or seal each such package as to indicate clearly that the sale or delivery of such package has been prohibited, and no such package shall be sold or kept, offered or exposed for sale or delivery or otherwise disposed of unless—

- (i) the contents of such package have been brought into conformity with the provisions of the Central Act or any rule or order made thereunder, by the manufacturer, packer or distributor thereof, or
- (ii) the disposal thereof has been authorised by the Controller.

(4) No person shall keep in any place, where any transaction is made, any commodity in packaged form which is not for sale, and if any commodity in packaged form is kept in such place in contravention of the provisions of this sub-section, such commodity shall be presumed to have been kept in such place for sale.

CHAPTER IX

PROVISIONS WITH REGARD TO THE SALE OF COMMODITIES IN ANY OTHER FORM

32. (1) Where the sale of any commodity is made by number and the number of the commodity delivered to the purchaser in pursuance of such sale is lesser than the number paid for, the seller shall be deemed to have used a false measure.

Sale of commodities by numbers

(2) Where, in relation to any commodity sold by number, there is a custom or usage of delivering a fixed number of such commodities in addition to the number of commodities paid for, such custom or usage shall, on and from the commencement of this Act, cease, and if the seller delivers to the purchaser the additional number of commodities in accordance with such custom or usage, he shall be deemed to have used a false measure and the purchaser shall be deemed to have abetted the use of such false measure.

Sale of
commodities
by heaps.

33. (1) Where any commodity is sold by heaps, the approximate weight, measure or the number of commodity contained in each heap shall be conspicuously announced by the seller or his agent, if any, either by word of mouth or by a written notice placed on each heap:

Provided that no such announcement shall be necessary in the case of a heap the market price of the contents of which does not exceed one rupee.

(2) Where, no weighment, measurement or counting of any commodity sold by heap, it is found that the weight, measure or number, determined by such weighment, measurement or counting is less than the approximate weight, measure or number announced by the seller or his agent and the deficiency is more than five per cent of such announced weight, measure or number, the seller shall be deemed to have used a false weight or measure.

CHAPTER X

OFFENCES AND PENALTIES

Penalty for
manufacturing,
etc. of
non-standard
weights or
measures.

34. Whoever—

- (a) makes or manufactures, or causes to be made or manufactured (except where he is permitted under the Central Act so to do), any weight or measure in accordance with any standards other than the standards established by or under the Central Act, or
- (b) (i) sells or otherwise transfers, or causes to be sold or otherwise transferred, or
- (ii) lets, or causes to be let, on hire, any weight or measure which has been manufactured in accordance with any standards other than the standards established by or under the Central Act, shall be punished with imprisonment for a term which may extend to one year and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

Penalty for
counterfeiting
of seals etc.

35. (1) Whoever—

- (i) co-counterfeits any seal specified by or under this Act or the Central Act, or
- (ii) sells or otherwise disposes of any counterfeit seal, or
- (iii) possesses any counterfeit seal, or
- (iv) counterfeits any stamp whether made under this Act or the Central Act or any rule made under either of those Acts, or
- (v) removes any stamp made, whether under this Act or the Central Act or any rule made under either of those Acts, or tampers with any stamp so made, or

- (vi) removes any stamp made, whether under this Act or the Central Act or any rule made under either of those Acts, and affixes the stamp so removed on, or inserts the same into, any other weight or measure, or
- (vii) wilfully increases or diminishes or alters in any way any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be deceived thereby, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(2) Whoever obtains, by unlawful means, possession of any seal specified by or under this Act or the Central Act, and uses, or causes to be used, any such seal for making any stamp on any weight or measure with a view to representing that the stamp made by such seal is authorised by or under this Act or the Central Act shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment, for a term which may extend to five years and also with fine.

(3) Whoever, being in lawful possession of a seal specified by or under this Act or the Central Act uses, or causes to be used, such seal without any lawful authority for such use, shall be punished with imprisonment for a term which may extend to two years, and for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(4) Whoever sells, offers or exposes for sale or otherwise disposes of any weight or measure which, he knows or has reason to believe, bears thereon a counterfeit stamp, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

36. (1) Except where he is permitted under the Central Act so to do, whoever sells, or causes to be sold, delivers, or causes to be delivered, any commodity, article or thing by any weight, measure or number other than the standard weight, measure or number, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for sale or delivery of commodities etc. by non-standard weight or measure.

(2) Whoever renders, or causes to be rendered, any service in terms of any weight, measure or number other than the standard weight, measure or number, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

37. (1) Whoever keeps any weight or measure other than the standard weight or measure in any premises in such circumstances as to indicate that such weight or measure is being, or is likely to be, used for any—

- (a) weightment or measurement, or

Penalty for keeping non standard weights or measures for use and for other contraventions.

(b) transaction or for industrial production or for protection, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

(2) Whoever—

- (i) in selling any article or thing by weight, measure or number, delivers, or causes to be delivered, to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or
- (ii) in rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for; or
- (iii) in buying any article or thing by weight, measure or number, receives, or causes to be received, from the vendor any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or
- (iv) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for; shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(3) Whoever enters, after the commencement of this Act into any contract or other agreement (not being a contract or other agreement for export) in which any weight, measure or number is expressed in terms of any standard other than the standard weight, measure or number established by or under the Central Act, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for
contraven-
tion of sec-
tion 10.

38. Whoever, in relation to any specified class of goods, undertakings or users of weights or measures, uses in any transaction or for industrial production or for protection, any weight, measure or number, other than the weight, measure or number specified by rules made under section 10, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for
contraven-
tion of sec-
tion 11.

39. Except where he is permitted under the Central Act so to do, whoever, in relation to any goods or things which are sold, transferred, distributed or delivered, or any service rendered,—

- (a) quotes any price or charge, or makes any announcement with regard to the price or charge, or
- (b) issues or exhibits any price list, invoice, cash memo, or other document, or
- (c) prepares or publishes any advertisement, poster or other document, or
- (d) indicates the weight, measure or number of the net contents of any package on any label, carton or other thing, or
- (e) expresses in relation to any transaction, industrial production or protection, any quantity or dimension,

otherwise than in accordance with the standard units of weight, measure or numeration established by or under the Central Act, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

40. Whoever, being required to obtain a licence under this Act, makes, manufactures, repairs or sells any weight, or measure, without being in possession of a valid licence, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

Penalty for
contraven-
tion of
section 16.

41. A licensee who after the suspension or cancellation of the licence issued, renewed or continued under this Act, omits or fails to stop functioning as a licensee under this Act, shall be punished with imprisonment for a term which may extend to one year.

Penalty for
contraven-
tion of sec-
tion 17.

42. Except where he is permitted under the Central Act so to do, whoever makes or manufactures any weight or measure which,—

Penalty for
contraven-
tion of sec-
tion 18.

(a) though ostensibly purports to conform to the standards established by or under that Act does not actually conform to the said standards, or

(b) bears thereon any indication of weight or measure which is not in conformity with the standards of weight or measure established by or under that Act, whether such indication is or is not in addition to the said standards,

shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

43. Whoever sells, uses or keeps for use any weight or measure which, being required to be verified and stamped under this Act, has not been so verified and stamped, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for
contraven-
tion of sec-
tion 19.

44. Whoever, being required by section 20 to maintain any record or register, omits or fails to do so, or being required by an Inspector to produce any records or registers for his inspection, omits or fails to do so, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for
contraven-
tion of sec-
tion 20.

45. Whoever, being required by section 21 to present any weight or measure for verification or re-verification omits or fails, without any reasonable cause, to do so, shall be punished with fine which may extend to five hundred rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for
contraven-
tion of sec-
tion 21.

Penalty for
contraven-
tion of sec-
tion 25.

46. Whoever, being required by an Inspector or any person authorised by or under this Act to exercise the powers of an Inspector, to produce before him for inspection any weight or measure, or any document or other record relating thereto, omits or fails, without any reasonable cause, to do so, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for
contraven-
tion of sec-
tion 26.

47. Whoever obstructs the entry of an Inspector, or any person authorised by or under this Act to exercise the powers of an Inspector, into any premises for the inspection or verification of any weight or measure or any document or other record relating thereto or the net contents of any packaged commodity or for any other prescribed purpose, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years.

Penalty for
contraven-
tion of sec-
tions 27 and
28.

48. Whoever prevents the Controller or any officer authorised by the Controller in this behalf, from searching any premises or from making any seizure of any weight, measure, packaged goods, document, record or label, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

Penalty for
contraven-
tion of sec-
tion 31.

49. (1) Whoever manufactures, distributes, packs, sells or keeps for sale or offers or exposes for sale, or has in his possession for sale, any commodity in packaged form, shall, unless each such package conforms to the provisions of section 31 be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(2) Whoever manufactures, packs, distributes or sells, or causes to be manufactured, packed, distributed or sold, any commodity in packaged form, knowing or having reason to believe that the commodity contained in such package is lesser in weight, measure or number than the weight, measure or number, as the case may be, stated on the label thereon, or it does not conform to the provisions of the Central Act or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

Penalty for
contraven-
tion of sec-
tion 32.

50. Whoever is deemed under section 32 to have used, or abetted the use of, any false measure, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

Penalty for
contraven-
tion of sec-
tion 33.

51. Whoever sells any commodity by heaps without complying with the provisions of section 33, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

52. Whoever alters or otherwise tampers with any licence issued or renewed under this Act or any rule made thereunder, otherwise than in accordance with any authorisation made by the Controller in this behalf, shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to one year, or with both.

Penalty for tampering with licence

53. Whoever sells, delivers or disposes of, or causes to be sold, delivered or disposed of, any weight or measure which has been rejected on verification under this Act or the Central Act, or any rule made under either of the said Acts, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both:

Penalty for selling or delivering rejected weights and measures.

Provided that nothing in this section shall apply to the sale, as scrap, of any rejected weight or measure which has been defaced in the prescribed manner.

54. Whoever personates in any way the Controller or the Inspector or any other officer authorised by the Controller shall be punished with imprisonment for a term which may extend to three years.

Penalty for personation of officials.

55. (1) Whoever gives information to an Inspector which he may require or ask for in the course of his duty and which such person either knows or has reason to believe to be false or does not believe to be true shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for giving false information or maintaining false records or registers.

(2) Whoever, being required by or under this Act so to do, maintains any record or register, which is false in any material particular, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

56. (1) If any Inspector or any other officer exercising powers under this Act or any rule made thereunder wilfully verifies or stamps any weight or measure in contravention of the provisions of this Act or of any rule made thereunder, he shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

Wilful verification or disclosure in contravention of law.

(2) If any Inspector or other officer who enters into any premises in the course of his duty wilfully discloses, except in the performance of such duty, to any person any information obtained by him from such premises with regard to any trade secret or any secret in relation to any manufacturing process, he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

57. An Inspector or any other officer exercising powers under this Act or any rule or order made thereunder who knows that there are no reasonable grounds for so doing, and yet—

Vexatious search.

(a) searches, or causes to be searched, any house, conveyance or place, or

- (b) searches any person, or
- (c) seizes any weight, measure or other movable property,

shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

Penalty for contravention not separately provided for.

58. Whoever contravenes any provision of this Act for the contravention of which no punishment has been separately provided for in this Act, shall be punished with fine which may extend to two thousand rupees.

Presumption to be made in certain cases.

59. (1) If any person—

- (a) makes or manufactures, or causes to be made or manufactured, any false weight or measure, or
- (b) uses, or causes to be used, any false or unverified weight or measure in any transaction or for industrial production or for protection, or
- (c) sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred any false or unverified weight or measure,

it shall be presumed, until the contrary is proved, that he had done so with the knowledge that weight or measure was a false or unverified weight or measure, as the case may be.

(2) If any person has in his possession, custody or control any false or unverified weight or measure in such circumstances as to indicate that such weight or measure is likely to be used in any transaction or for industrial production or for protection, it shall be presumed, until the contrary is proved, that such false or unverified weight or measure was possessed, held or controlled by such person with the intention of using the same in any transaction or for industrial production or for protection.

Penalty when employer to be deemed to have abetted an offence.

60. (1) Any employer who knows or has reason to believe that any person employed by him has, in the course of such employment, contravened any provision of this Act or any rule made thereunder, shall be deemed to have abetted an offence against this Act:

Provided that no such abetment shall be deemed to have taken place if such employer has, before the expiry of seven days from the date—

- (a) on which he comes to know of the contravention, or
- (b) has reason to believe that contravention has been made,

intimated in writing to the Controller the name of the person by whom such contravention was made and the date and other particulars of such contravention.

(2) Whoever is deemed under sub-section (1) to have abetted an offence against this Act shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

Explanation.—Dismissal or termination of service of an employee after the expiry of the period specified in the proviso to sub-section (1) shall not absolve any employer of his liability under this sub-section.

61. (1) If the person committing an offence under this Act is a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

62. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Cognizance of offences.

(a) no court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by the Controller or any other officer authorised in this behalf by the Controller by general or special order;

(b) no court inferior to that of a Judicial Magistrate of the First Class shall try any offence under this Act;

(c) an offence punishable under sections 34, 36, 37, 38, 39, 40, 43, 49, 50, 51 or sub-section (3) of section 69 may be tried summarily by a Magistrate and no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction for an offence which is tried summarily under this section.

63. (1) Any offence punishable under sections 37, 38, 39, 40, 42, 43, 44, 45, 46, 49, 51, 53, 58 or sub-section (3) of section 69 may either before or after the institution of the prosecution, be compounded, by the Controller or such other officer as may be authorised in this behalf by the Controller, on payment of, or credit to, the State Government of such sum as the Controller or such other officer may specify:

Compounding of offence.

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Nothing in sub-section (1) shall apply to a person who commits the same or similar offence within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation.—For the purpose of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(3) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender, in respect of the offence compounded, and the offender, if in custody, shall be discharged forthwith.

(4) No offence under this Act shall be compounded except as provided by this section.

Provisions of Indian Penal Code not to apply to any offence under this Act.

64. The provisions of the Indian Penal Code, in so far as such provisions relate to offences with regard to weights or measures, shall not apply to any offence which is punishable under this Act. 45 of 11

CHAPTER XI

MISCELLANEOUS

Transfer or transmission of business.

65. (1) Where the business of a person licensed under this Act is transferred by succession, intestate or testamentary, the heir or legatee, as the case may be, shall not carry on the business of such licensee either in his own name or in any other name, unless the heir or legatee has, before the expiry of sixty days after the date of such transmission, made to the Controller an application for the issue of a licence in accordance with the provisions of this Act:

Provided that nothing in this section shall be deemed to prohibit the heir or legatee from carrying on business as such licensee for the aforesaid period of sixty days, and, if he has applied for such licence, until he is granted the licence, or is, by a notice in writing informed by the Controller that such licence cannot be granted to him.

(2) Where the business of any person licensed under this Act is transferred by sale, gift, lease or otherwise, the transferee or lessee, as the case may be, shall not carry on such business either in his own name or in any other name unless, he has obtained a licence to carry on such business.

Licences neither salable nor transferable.

66. A licence issued or renewed under this Act shall not be salable or otherwise transferable.

Appeals.

67. (1) Subject to the provisions of sub-section (2), an appeal shall lie—
(a) from every decision under Chapter V, VI, VII, VIII or IX of this Act, of—

(i) an Inspector,

(ii) an Additional Controller,

to the Controller; and

(b) from every decision of the Controller under Chapter V, VI, VII, VIII or IX of this Act, not being a decision made in appeal under clause (a),

to the Government or any officer specially authorised in this behalf by the Government.

(2) Every such appeal shall be preferred within sixty days from the date of the decision appealed against:

Provided that the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the said period of sixty days, permit the appellant to prefer the appeal within a further period of sixty days.

(3) On receipt of any such appeal, the appellate authority shall, after giving the parties to the appeal a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order, as it may think fit, confirming, modifying, or reversing the decision appealed against, or may send back the case with such direction as it may think fit, for a fresh decision after taking additional evidence, if necessary.

(4) Every appeal shall be preferred on payment of such fees, not exceeding twenty-five rupees, as may be prescribed.

(5) The Government may, on its own motion or otherwise, call for and examine the record of any proceeding (including a proceeding in appeal) in which any decision or order has been made, for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such orders thereon as it may think fit:

Provided that no decision or order shall be varied under this sub-section so as to prejudicially affect any person unless such person has been given a reasonable opportunity of showing cause against the proposed action.

68. The Government may, by rules made under section 69, levy such fees, not exceeding—

Levy of fees.

- (a) one hundred rupees, for the issue of renewal of a licence for making, manufacturing, repairing or selling any weight or measure,
- (b) fifty rupees, for the alteration of any licence,
- (c) five thousand rupees, for the verification of any weight or measure,
- (d) ten rupees, for the adjustment of any weight or measure,
- (e) ten rupees, for the issue of a duplicate of a licence or certificate of verification,
- (f) one rupee, for every one hundred words or less, for the grant of copies of any document, not being a document of a confidential nature,
- (g) twenty-five rupees, for any appeal preferred under this Act.

69. (1) The Government may, by notification, make rules to give effect to the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the class of goods, undertakings or users in relation to which no transaction, dealing or contract shall be made or had except by such weight, measure or number,
- (b) the places at which, and the custody in which, the following standards shall be kept, namely:—
 - (i) reference standards;
 - (ii) secondary standards;
 - (iii) working standards,
- (c) the person by whom or authority by which and the place at which the following standards shall be verified, authenticated and stamped, namely:—
 - (i) secondary standards;
 - (ii) working standards,
- (d) the form in which and the manner in which an application shall be made for the issue or renewal of a licence to carry on business as a maker, manufacturer, repairer or dealer of any weight or measure,

- (e) the form in which and the conditions, limitations and restrictions subject to which any licence may be issued and the period of validity of such licence,
- (f) the sum to be furnished by a repairer as security by a licensee,
- (g) the description of weight or measure which may be sold by a user,
- (h) disposal of weights or measures after cancellation of licence and the distribution of the proceeds thereof,
- (i) the records and the registers relating to weights or measures to be maintained by makers, manufacturers, repairers or dealers,
- (j) the period within which weights or measures shall be verified or re-verified,
- (k) the steps to be taken for verifying any weight or measure which cannot be moved from its location,
- (l) the form in which a certificate of verification of any weight or measure shall be granted,
- (m) subject to the provisions of section 26 the purposes for which an Inspector may enter any premises,
- (n) the manner of disposal of seized articles which are subject to speedy or natural decay,
- (o) manner of defacement of rejected weights or measures,
- (p) the form in which appeals may be preferred and the procedure for the hearing of appeals,
- (q) the amount of fees which may be levied and collected for each of the matters specified in section 68, and
- (r) any other matter which is required to be, or may be, prescribed.

(3) In making any rule under this section, the Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees.

(4) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication in the Official Gazette.

(5) Every rule made under this Act, shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

70. (1) Where any type of weight or measure manufactured by a licensed manufacturer is such that all the weights or measures of that type manufactured by him within the State of Himachal Pradesh is intended to be sold, distributed or delivered therein, the Government may, by notification, direct that the model of every such type of weight or measure shall be submitted for approval in accordance with the provisions of sections 36, 37 and 38 of the Central Act, and thereupon, the provisions of the said sections 36, 37 and 38 shall become applicable to such model, and references in those sections to the "Central Government" and to the "Central Act" shall be construed as references respectively to the "State Government" and "this Act".

Power of State Government to make provisions of Central Act relating to approval of models applicable to models of weights or measures intended to be used exclusively within the State.

(2) Where the Government makes a direction under sub-section (1) in relation to any type of weight or measure, any contravention of the provisions of sections 36, 37 or 38 of the Central Act in relation to that type of weight or measures shall be an offence punishable under this Act and the punishment provided therefor in the Central Act shall be deemed to be punishment provided therefor in this Act as if the said provisions relating to punishments were enacted by this Act.

71. The provisions of this Act, in so far as, they relate to the verification and stamping of weights or measures used for industrial production or for protection, shall not apply to any factory exclusively engaged in the manufacture of any arm, or ammunition, or both, for the use of the armed forces of the Union.

Act not to apply to the armed forces of the Union.

72. (1) The Himachal Pradesh Weights and Measures (Enforcement) Act, 1968 is hereby repealed.

Repeal and savings.

(2) Without prejudice to the provisions contained in the Himachal Pradesh General Clauses Act, 1968 with respect to repeals, any appointment, notification, rule, order, registration, licence, certificate, notice, decision, approval, authorisation or consent made, issued or given, under the Himachal Pradesh Weights and Measures (Enforcement) Act, 1968, shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued or given under the corresponding provisions of this Act.

(3) Any proceeding relating to the trial of any offence punishable under the provisions of the Act so repealed, shall be continued and completed as if the said Act has not been repealed but had continued in operation, and any fine imposed in such proceeding shall be recovered under the Act so repealed, as if the said Act has not been repealed.

73. The Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Government as may be specified in the notification.

Delegation of powers.

23 of 1968

16 of 1969

23 of 1968

STATEMENT OF OBJECTS AND REASONS

The Government of India, on Maitra Committee Report, enacted a Central Act for the enforcement of new standards of weights and measures to regulate trade or commerce and also recommended similar legislation for the States.

Accordingly, this Bill aims to establish new standards of weights and measures, to regulate trade or commerce in weights, measures or other goods which are sold or distributed by number (*i.e.* commodities in a packaged form) in Himachal Pradesh and to provide for matters connected therewith. Hence this Bill.

DAULAT RAM CHAUHAN,
Minister-in-charge.

SIMLA:
The 23rd March, 1979.

FINANCIAL MEMORANDUM

Since the provisions of this Bill are mostly identical with those of the existing Act to be repealed and these are to be implemented through the existing Government machinery no expenditure is to be incurred, over and above the one which is being incurred at present.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 69 of the Bill empowers the State Government, subject to the condition of previous publication, to make rules in respect of the matters enumerated therein. These rules shall, as soon as, may be after they are made, be laid before the Legislative Assembly. This delegation is normal in character.

शिमला-171004, 23 मार्च, 1979

संख्या 1-17/79-वि०स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973, के नियम 135 के अन्तर्गत, दी हिमाचल प्रदेश प्रिवेंशन आफ बैगरी बिल, 1979 (बिल नम्बर 15 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 23 मार्च, 1979 को पुरःस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है ।

वेद प्रकाश भटनागर,
सचिव ।

THE HIMACHAL PRADESH PREVENTION OF BEGGARY BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A
BILL

to provide for the prevention of begging, removal, detention and custody, trial and punishment of beggar offenders.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Prevention of Beggary Act, 1979.

Short title,
extent and
commence-
ment.

(2) It shall extend to the whole of Himachal Pradesh.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

Definitions

(a) “alms” means anything such as money, food cooked or of uncooked, grain or clothing or anything of value given gratuitously to a beggar;

(b) “begging” means—

(i) soliciting or receiving alms in a public place, under any pretence;

(ii) having no visible means of subsistence and wandering about or remaining in public place in such condition or manner as makes it likely that the person doing so exists by soliciting or receiving alms;

(iii) entering in any private premises for the purpose of soliciting or receiving alms;

(iv) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of a human being or of an animal; or

(v) allowing oneself to be used as an exhibit or exhibiting some one else (e.g. a child or some article, animal, bird, snake, etc.) for the purpose of soliciting or receiving alms; but does not include soliciting or receiving money or food or gifts for a purpose authorised by any law, or authorised in the manner prescribed;

(c) “beggar” means a person who is found begging;

(d) “child” means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;

(e) “guardian” in relation to a child, includes any person who is in opinion of the competent authority having cognizance of any proceeding in relation to the child, has, for the time being, the actual charge of, or control over that child;

(f) “parent” means the father or the mother of child;

(g) “prescribed” means prescribed by rules made under this Act;

(h) “public place” means and includes any place or precincts thereof to which, for the time being, the public have or are permitted to have

an access, whether on payment or otherwise, and includes any public conveyance, a passenger bus and a railway compartment;

- (i) "special police officer" means a police officer not below the rank of Inspector appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act.

Removal of
a beggar
from any
place.

3. (1) Whenever a person is alleged to be begging and is produced before the Magistrate, the Magistrate shall proceed to inquire into the truth of the information received and, after giving the person an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such a person is found begging, he shall record a declaration that the person is a beggar. The Magistrate shall also determine, after making an enquiry in the manner prescribed, whether the person was born in the State of Himachal Pradesh and domiciled therein and shall include its findings in the declaration.

(2) If in the course of an inquiry made under sub-section (1), it appears to the Magistrate that the person declared a beggar under sub-section (1) is neither born nor domiciled in the State of Himachal Pradesh, the Magistrate, after making such enquiry, if any, as it deems necessary, and if upon such enquiry it appears to him that it is in the interest of the general public that such person should be required to remove himself therefrom and be prohibited from re-entering the same, the Magistrate shall, by order in writing communicated to the person in the manner specified therein, require him after a date (to be specified in the order), which shall not be less than seven days from the date of the order, to remove from the place to such place, whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit him from re-entering the place without the permission in writing of the Magistrate having jurisdiction over such place.

(3) Whoever—

- (a) fails to comply with an order issued under sub-section (2), within the period specified therein, or whilst an order prohibiting him or her from re-entering a place without permission is in force, re-enters the place without such permission, or
- (b) knowingly that any person has, under sub-section (2) been required to remove himself or herself from the place and has not obtained requisite permission to re-enter it, harbours or conceals such person in the place, shall be punishable,—
 - (i) on first conviction with imprisonment for a term which may extend to three months, or with a fine which may extend to five hundred rupees, or with both; and
 - (ii) in the event of a second or subsequent conviction with imprisonment for a term not less than three months, or with fine which may extend to one thousand rupees, or with both; and
 - (iii) in the case of continuing offence with an additional fine which may extend to twenty rupees for every day after the first offence during which such person has persisted the offence:

Provided that in the case of conviction for an offence under sub-clause (ii) of this sub-section, for special and adequate reasons to be mentioned in the judgement of the court, a sentence of less than three months imprisonment may be passed.

(4) If in the course of an enquiry made under sub-section (1), it appears to the Magistrate that the person declared a beggar under sub-section (1), is either born or domiciled in the State of Himachal Pradesh or that it would not be in the general public interest to order his removal under sub-section (2), shall, after giving such a person an opportunity of adducing further evidence, as he may deem fit, punish such a beggar,—

- (a) on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and
- (b) in the event of a second or subsequent conviction with imprisonment for a term of not less than three months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the case of conviction for an offence under sub-clause (b) of this sub-section for special and adequate reasons to be mentioned in the judgement of the court, a sentence of less than three months imprisonment may be passed.

(5) Notwithstanding anything contained in this section, if any person, who is declared as a beggar under sub-section (1), is a child, shall be dealt with under the provisions of the East Punjab Children Act, 1949, as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, or the Children Act, 1960, as in force in the areas, which comprised in Himachal Pradesh immediately before the 1st day of November, 1966, as the case may be.

39 of 1949
31 of 1966
60 of 1960

4. (1) A person over the age of 18 years who knowingly lives, wholly or in part, on the earnings of a beggar shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Punishment for living on the earnings of a beggar.

(2) In the event of a second or subsequent conviction of an offence under this section a person shall be punishable with imprisonment for a term of not less than three months, or with fine which may extend to two thousand rupees, or with both.

(3) Where any person is proved—

- (a) to be living with, or to be habitually in company of, a beggar; or
- (b) to have exercised control, direction or influence over the movements of a beggar in such a manner as to show that such person is aiding, abetting or compelling him to beg; or
- (c) to be acting as a tout on behalf of a beggar; or
- (d) to be employing or causing any person to beg; or
- (e) to have connived or encouraged the employment of a child, whose custody, charge, or care is with such a person, for begging; or
- (f) to have used another person as an exhibit for the purpose of begging;

it shall be presumed, until contrary is proved that such person is knowingly living on the earnings of a beggar within the meaning of this section.

5. (1) Any person over the age of 18 years who,—

- (a) procures or attempts to induce a child or a female, whether with or without consent, for the purpose of begging; or
- (b) induces a child or a female to go from any place, with the intent that such child or female may become a beggar; or
- (c) takes or attempts to take a child or female, or causes a child or female to be taken, from one place to another with a view to his/

Procuring, inducing, or taking a child or female for the sake of begging.

her carrying on, or being brought up to carry on beggary; or
(d) causes, or induces a child or a female to carry on beggary;
shall be punishable on first conviction with imprisonment for a term of not less than three months, or with fine which may extend to two thousand rupees, or with both.

(2) In the event of a second or subsequent conviction of an offence under this section a person shall be punishable with rigorous imprisonment for a term of not less than three months, or with fine which may extend to two thousand rupees, or with both.

(3) An offence under this section shall be triable—

- (a) in the place from which a child or female is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such child or female is made; or
- (b) in the place to which he/she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

Sentence of imprisonment for non-payment of fine.

6. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the court, which sentences such offender, to direct by the sentence that, in default of payment of fine, the offender shall suffer imprisonment for a term not exceeding one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine, which imprisonment shall be in excess of another imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Probation of good conduct and detention in beggar homes.

7. (1) (a) A person convicted for the first time of any offence under section 3 may having regard to his age, character, antecedents, and the circumstances in which the offence was committed be released by the court before which he is convicted on probation of good conduct in the manner provided in sub-sections (1) and (2) of section 360 Code of Criminal Procedure, 1973.

2 of 1974

(b) A person convicted for the first time of any offence under section 3 may having regard to his age, character, antecedents and the circumstances in which the offence was committed also be released with admonition in the manner provided in sub-section (3) of section 360 of the Code of Criminal Procedure, 1973.

2 of 1974

(c) The provisions of sub-sections (4), (5), (6), (7), (8), (9) and (10) of section 360 of the Code of Criminal Procedure, 1973 shall apply to the cases referred to in clause (a) and clause (b).

2 of 1974

(2) Where a child or a female is convicted of an offence under section 3 and is not released under clause (a) of sub-section (1) on probation of good conduct or under clause (b) of that sub-section with admonition, the court convicting the child or the female may, having regard to the age, character, antecedents of the child, or the female, as the case may be, and the circumstances in which the offence was committed, pass in lieu of the sentence of imprisonment or fine, a sentence of detention in a beggar home.

2 of 1974

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other law for the time being in force, no person convicted under section 4 or section 5 shall be released on probation or with admonition.

8. (1) When a court convicting a person of an offence under this Act finds that he has been habitually committing or attempting to commit, or abetting the commission of, that offence or any other offence under this Act and the court is of opinion that it is necessary or desirable to require that person to execute a bond for good behaviour, such court may at the time of passing the sentence on the person order him to execute a bond for a sum proportionate to his means with or without sureties for his good behaviour during such period not exceeding three years, as it thinks fit.

Security of good behaviour from habitual offenders.

(2) If the conviction is set aside on appeal or otherwise the bond executed shall become void.

(3) An order under this section may also be made by an appellate court or by the High Court when exercising its powers of revision.

9. (1) When any person is convicted of any offence punishable under this Act by a court, such court may, if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from, such residence, after release be notified according to the rules made under this Act for a period not exceeding five years from the date of expiration of that sentence.

Notification of addresses of the offenders.

(2) If such conviction is set aside on appeal or otherwise such order shall become void.

(3) An order under this section may also be made by an appellate court or by the High Court when exercising its powers of revision.

(4) Any person charged with a breach of any rule referred to in subsection (1) may be tried by a Magistrate of competent jurisdiction in the area in which the place last notified as his residence is situated.

2 of 1974

10. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be cognisable and every such offence shall be tried summarily by a Magistrate of the first class in accordance with the procedure specified in the said Code:

Offences to be cognizable and triable summarily.

Provided that, notwithstanding anything contained in that Code—

- (i) arrest without warrant may be made only by the special police officer or under his direction or guidance or subject to his prior approval;
- (ii) when the special police officer requires any officer subordinate to him to arrest without warrant, otherwise than in his presence, any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;
- (iii) any police officer, not below the rank of Inspector specially authorised by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of

the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made.

Seizure and custody of animals exposed for soliciting alms.

11. (1) The special police officer, or any other police officer acting either under the directions of the special police officer or in the circumstances given in third proviso to section 10, affecting the arrest of a person, who is found begging, may seize any animal, the sore, wound, injury, deformity or disease of which is exposed or exhibited by such person with the object of soliciting or receiving alms.

(2) The police officer, affecting the seizure under sub-section (1), may send such an animal to any infirmary established under section 35 of the Prevention of Cruelty to Animals Act, 1960, for detention therein pending orders of the Magistrate under sub-section (3) of this section.

59 of 1960

(3) The Magistrate, before whom the person found begging is brought, may direct that the animal shall be treated and cared for in such infirmary until it becomes fit for discharge or that it shall be sent to a pinjrapole, or if the veterinary officer in-charge of the area in which the animal is found or such other veterinary officer as has been authorised by the rules made under section 38 of the Prevention of Cruelty to Animals Act, 1960, certifies that it is incurable or cannot be cured without cruelty, that it shall be destroyed, and the Magistrate may also order that after release from the infirmary the animal may be confiscated.

59 of 1960

(4) An animal sent for care and treatment to any infirmary shall not, unless, the Magistrate otherwise directs, be released from such place except upon a certificate of its fitness for discharge is issued by the veterinary officer-in-charge of the area, in which the infirmary is situated, or such other veterinary officer as has been authorised by rules made under section 38 of the Prevention of Cruelty of Animals Act, 1960.

59 of 1960

Seizure and custody of a child found with a beggar.

12. (1) The special police officer or any other police officer acting either under the directions of a special police officer or in the circumstances mentioned in third proviso to section 10, affecting the arrest of a person under this Act, may take into his custody any child or a female found with such person as being procured, induced or taken by such person for the purpose of begging and send or cause to be sent the said child or the female as the case may be, to the beggar home.

(2) The in charge of the beggar home shall be responsible for the care of the child or the female, as the case may be, and shall produce or cause to be produced him/her, before the Magistrate, as and when so required during the trial of the case. The Magistrate may, after making such enquiries as he may deem fit, make an order that such child/female be detained for such period as may be specified in the order in beggar home or in such other custody as he, for reasons to be recorded in writing, shall consider suitable:

Provided that such custody shall not be that of a person, or body of persons, of a religious persuasion different from that of the child or the female to be looked after.

(3) Whenever it is established that the person whose custody has been entrusted to a beggar home under this section is a lifted child, the Magistrate may, after making such enquiry as he may deem fit and satisfying himself as to the correctness of the parentage of such a child, restore the child to his parents or his legal guardian, with the condition that the said child shall be properly looked after and brought up and shall be produced before him whenever so required.

(4) Against every order under sub-section (2) or (3) an appeal shall lie to the Sessions Judge, whose decision on such appeal shall be final.

13. (1) The State Government may in its discretion establish as many **beggar homes** for the purpose of this Act as it thinks fit, and such homes, when established, shall be maintained in such manner as may be prescribed.

Beggar homes.

(2) For the purpose of sub-section (1) the State Government may by notification in the Official Gazette and subject to such conditions as it may deem fit to impose, declare any institution such as 'children home', 'destitute home', run by the Government or by any other institution and on such declaration the said home or institution shall be deemed to be a beggar home established under this Act:

Provided that any such condition may require that the management of the beggar home shall, wherever practicable be entrusted to a woman.

14. No such, prosecution or other legal proceeding shall lie against the Government or any officer or authority vested with powers or authorised to discharge any function under this Act, for anything which is in good faith done or is intended to be done under this Act.

Protection of action taken in good faith.

15. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provision or give such directions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the removal of the difficulty.

Power to remove difficulties.

16. (1) The State Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for,—

- (a) the manner of authorising a purpose under clause (b) of section 2;
- (b) the manner in which the residence and any change of residence of a convict is required to be notified under section 9;
- (c) the manner in which the beggar homes established under sub-section (1) of section 13 shall be maintained;
- (d) the conditions subject to which the institutions may be declared as beggar homes under sub-section (2) of section 13; and
- (e) any other matter which has to be, or may be, prescribed under the Act.

(3) Every rule made under this section shall be laid, as soon as may be, after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the sessions aforesaid, the Legislative Assembly

makes any modification in the rule or decides that the rules should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Operation
of other
laws not
barred.

17. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constituted an offence under this Act or from being liable under such other law to higher punishment or penalty than that provided by these provisions.

STATEMENT OF OBJECTS AND REASONS

The problem of beggary has been engaging the attention of the Government over the past few years because of economic reasons as also due to increasing social dislocations from accelerated pace of economic growth. This problem has to be tackled effectively as some persons have been found exploiting this conventional practice to turn into a parasitic means of livelihood and the child lifting and the commission of tribal offences of theft and pick pocketing in the guise of begging are on the increase. The practice of many diseased persons resorting to begging also poses danger to public health.

Anti-beggary measures were introduced in the Union territory of Delhi in 1960, in Punjab in 1970 and in Haryana in 1971. It is feared that this Pradesh may become sheltering place for beggars, being displaced persons from the adjoining States as also from other States. Although the problem of beggary is not so acute as in other States yet this menace in whatever form and size if exists, in the State has to be effectively tackled. It is, therefore, imperative and in the general public interest to adopt suitable legislative and punitive measures to ensure that the problem is properly handled.

In Himachal Pradesh, section 150 of the Himachal Pradesh Municipal Act, 1968, authorises the municipal committees to detain beggars and place them in poor houses but the provisions in this Act remained inadequate as these do not authorise the courts to take effective measures against the beggars.

This Bill seeks to achieve the aforesaid objectives.

SIMLA:
The 23rd March, 1979.

JAGDEV CHAND,
Minister-in-charge.

FINANCIAL MEMORANDUM

Clause 13 of the Bill empowers the State Government in its discretion, to establish as many beggar homes as may be necessary to detain the children and women likely to be taken in custody under the provisions of the Bill. In this regard some expenditure, which cannot be precisely worked out at this state, out of the State exchequer has to be incurred. For the time being the State Government wants to make use of the Government institutions run by the Welfare Department and the existing machinery of the Government for the implementation of the provisions of the Bill. As such no immediate expenditure is required to be incurred.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of the Bill empowers the State Government to give the directions for the removal of difficulties and effective implementation of provisions of the Bill. Clause 16 empowers the State Government to make rules in respect of the matters enumerated therein. These rules are to be framed, subject to the condition of previous publication and shall, as may be, after these are made, be laid before the Legislative Assembly. The proposed delegation is necessary for the effective implementation of the provisions of the Bill and is normal in character.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Welfare Department File No. WLF. 3 (2) /75]

The Governor of Himachal Pradesh, having been informed of the subject matter of the Himachal Pradesh Prevention of Beggary Bill, 1979 recommends under Article 207 of the Constitution of India, its introduction and consideration of the Bill, in the Legislative Assembly of Himachal Pradesh.

शिमला-171004, 23 मार्च, 1979

संख्या 1-22/79-वि० स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973, के नियम 135 के अन्तर्गत, दा लैण्ड एक्विजिशन (हिमाचल प्रदेश अमेंडमेंट) बिल, 1979 (बिल नम्बर 16 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 23 मार्च, 1979 को पुरःस्थापित किया गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है ।

वेद प्रकाश भटनागर,
सचिव ।

Bill No. 16 of 1979.

THE LAND ACQUISITION (HIMACHAL PRADESH AMENDMENT) BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to amend the Land Acquisition Act, 1894 (Act No. 1 of 1894) in its application to the State of Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

1. This Act may be called the Land Acquisition (Himachal Pradesh Amendment) Act, 1979.

Short title.

2. In the first proviso to section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act) for the words “three years” the words “two years” shall be substituted.

Amendment of section 6.

3. In sub-section (2) of section 12 of the principal Act, after the word “made” the words “and, where the acquisition of land is not for the purpose of the Union, also send a copy of the award to the State Government” shall be added.

Amendment of section 12-A.

4. After section 12 of the principal Act, the following new section shall be inserted, namely:—

Insertion of new section 12-A.

“12-A. Power to correct award.—(1) The Collector may, at any time but not later than six months from the date of award, or where a reference is required to be made under section 18, before making of such reference, correct any clerical or arithmetical mistake in the award either on his own motion or on the application of any person interested.

(2) The Collector shall give immediate notice of any correction made in the award to all persons interested and, where the acquisition of land is not for the purpose of the Union, also to the State Government.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), such person shall be liable to refund the excess, and if he defaults or refuses to pay, the same may be realised as an arrear of land revenue”.

5. In section 17 of the principal Act—

Amendment of section 17.

(i) after sub-section (1) the following explanation shall be added, namely:—

“Explanation.—This sub-section shall apply to any waste or arable land, notwithstanding the existence therein of scattered trees or temporary structures, such as huts, pandals or sheds.”;

(ii) for sub-section (2), the following shall be substituted, namely:—

“(2) In the following cases, that is to say,—

- (a) whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station;
- (b) whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the purpose of any library or educational institution or for the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered under the Himachal Pradesh Co-operative Societies Act, 1969 or any dwelling-house for the poor, or the construction of labour colonies or houses for any other class of people under the Government-sponsored housing scheme, or any irrigation tank, irrigation or drainage, channel, or any well, or any public road;
- (c) whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance;

3 of 1969

the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.”

Amendment
of section
18.

6. After sub-section (2) of section 18 of the principal Act, the following sub-section shall be added, namely:—

“(3) Any order made by the Collector on any application under this section shall be subject to revision by the High Court, as if the Collector were a court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure, 1908.

5 of 1908

Insertion of
a new
sub-section
(3-A) and
substitution
of sub-section
(4)
of section
31.

7. (a) In section 31 of the principal Act,—

(a) after sub-section (3) the following sub-section (3A) shall be inserted.

“(3A) Notwithstanding anything in this section, if the person interested in the land as willing to accept the compensation in kind, instead of money, the Collector may further, with the sanction of the appropriate Government, instead of awarding a money compensation in respect of any land, give some other land of

equivalent value in exchange of the land acquired and thereby pay the compensation awarded in whole or in part in accordance with the market value of the land so given in 'exchange.'";

(b) for sub-section (4) the following sub-section (4) shall be substituted:—

“(4) Nothing in the last foregoing sub-sections (3) and (3A) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

8. After section 52 of the principal Act, the following new section shall be inserted, namely:—

Insertion of new section 52-A.

“52-A. *Protection of compensation.*—No compensation awarded or awardable under this Act.—

(a) before it is actually paid to the person entitled to receive the same; or

(b) before or after it is actually paid to the person entitled to receive the same in respect of any land which is not liable under the law for the time being in force to attachment or sale in execution of a decree or order of any court;

shall be liable to seizure, attachment or sequestration by process of any court, at the instance of a creditor, for any demand against the person entitled to compensation, or in satisfaction of a decree or order of any court, and, notwithstanding anything to the contrary in any law for the time being in force, neither the official assignee nor any receiver appointed under any law shall be entitled to proceed against or to have any claim on any ‘such compensation.’”

9. The Land Acquisition (East Punjab Amendment) Act, 1948, the Land Acquisition (Punjab Amendment) Act, 1953, the Land Acquisition (Punjab Amendment) Act, 1956, and the Land Acquisition (Punjab Second Amendment) Act, 1956, as in force in the areas comprised in Himachal Pradesh immediately before the 1st November, 1966 and the territories added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, the Land Acquisition (Punjab Amendment) Act, 1962 as in force in the said added territories and the Land Acquisition (Himachal Pradesh Amendment) Act, 1964, as in force in the areas comprised in Himachal Pradesh prior to 1st November, 1966 are hereby repealed:

Repeal and savings.

Provided that all appointments, rules and orders made, all notifications and notices issued, all transactions entered into and all suits and proceedings instituted under any of the Acts repealed under this section, so far as they are consistent with the provisions of this Act; shall be deemed to have been respectively made, issued, entered into and instituted under this Act.

15 of 1948
2 of 1954
17 of 1956
47 of 1956

31 of 1966
17 of 1962
9 of 1964

STATEMENT OF OBJECTS AND REASONS

Various amendments were made by the Punjab Government to the Land Acquisition Act, 1894. These amendments are applicable in the areas integrated with Himachal Pradesh in November, 1966. Some of these amendments were adopted by the Himachal Pradesh Government prior to re-organisation of Punjab, and in respect of others, the Himachal Pradesh Government framed its own enactment. In consequence, there are at present 6 amending Acts prevalent in Himachal Pradesh. It has, therefore, been considered administratively appropriate to combine all these amendments in a single amending Act and repeal all the previous ones.

It has been experienced that the persons whose lands are acquired are put to under hardship owing to delay in the completion of acquisition proceedings and for want of payment of adequate compensation. It has, therefore, been deemed essential to shorten the period from three years to two years intervening the date of the notification under section 4 and the publication of the declaration under section 6 prescribed under the first proviso to section 6 amended.

The rate of interest at "six" per centum per annum as payable under the provisions of sections 28 and 34 of the Central Act, was changed to "four" per centum per annum by the Land Acquisition (Punjab Amendment) Act, 1953 (Punjab Act No. 2 of 1953) which is in force in the old as well as in the new areas of Himachal Pradesh. Having regard to the provision of rate of interest in the Central Act as also to the prevailing rate of interest in various Government agencies, it has been deemed appropriate to bring it at par with the rate of interest prescribed under the Central Act. Accordingly it is now proposed to repeal the Punjab Amendment Act No. 2 of 1954 so as to restore the position as contained in the Central Act.

It is provided in the Central Act that the amount to be awarded by the Court to the persons claiming compensation pursuant to notice given under section 9 shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11. By the Punjab Act No. 17 of 1962 (which is now in force in the new areas) and the Himachal Pradesh Act No. 9 of 1964 (which is in force in the old areas), the words "or be less than the amount awarded by the Collector under section 11" were deleted. It has now been decided to bring the position in this regard at par with the one obtaining in the Central Act. Accordingly it is now proposed to repeal the Punjab Act No. 17 of 1962 and the Himachal Pradesh Act No. 9 of 1964 so as to restore the position obtaining in the Central Act.

The amount to be awarded by the Court under section 25 (3) of the Central Act has not to exceed the amount awarded by the Collector. By the Land Acquisition (Himachal Pradesh Amendment) Act, 1964; the words "unless the State Government has required the Collector that a reference be made under section 18 and the court is of the opinion that the amount awarded by the Collector is excessive and should be reduced" were added at the end of the said sub-section. It has now been decided to bring the position in this regard also at par with the one obtaining in the Central Act. Accordingly it is now proposed to repeal the Himachal Pradesh Act No. 9 of 1964, so as to restore the position as obtaining in the Central Act.

Under the existing law, the acquiring departments are also in a position to file a reference under section 18 against the award of the Collector like

the interested persons, if it is considered excessive. It has been noticed that the vested interests often misuse this provision to the great disadvantage of the landowners. In the interest of landowners, it has, therefore, been decided by Government to withdraw this power from the acquiring departments.

It has been found that in certain cases, owners who are expropriated from their land are rendered helpless for want of alternate land. It has, therefore, been considered necessary that the Collector may, with the sanction of the Government, award land in exchange of land acquired from an owner. Accordingly a provision for this purpose is being made by inserting a sub-section (3-A) to section 31.

This Bill seeks to achieve these objects.

SIMLA:

JAGDEV CHAND,
Minister-in-charge.

The 23rd March, 1979.

FINANCIAL MEMORANDUM

The rate of interest payable under section 28 and 34 of the Land Acquisition Act, 1894 is 6%. But the Himachal Pradesh Government reduced it to 4% in 1964. Having regard to the rate of interest prescribed under the Central Act as also the rate of interest prevailing in other Government agencies it has been considered proper to bring it at par with the rate of interest under the principal Act. The enhancement in the rate of interest is likely to increase the financial burden. The exact amount that is likely to be incurred on this account cannot be anticipated with any degree of exactness. But considering the pace of land acquisition prevailing at present, it is unlikely to exceed Rs. 10,000 in a full year.

DELEGATED LEGISLATION

Nil

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

(Revenue Department File No. 1-14/68-Vol. II-Rev. B)

The Governor of Himachal Pradesh, having been informed of the subject matter of the Land Acquisition (Himachal Pradesh Amendment) Bill, 1979, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill, in the Legislative Assembly.

शिमला-171004, 23 मार्च, 1979

संख्या 1-29/79-वि० स०.—हिमाचल प्रदेश विधान सभा प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत, दा हिमाचल प्रदेश विनियोग विधेयक, 1979 (1979 का विधेयक संख्यांक 17) जो दिनांक 23 मार्च, 1979 को हिमाचल प्रदेश विधान सभा में पुरःस्थापित हो गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है ।

वेद प्रकाश भटनागर,
सचिव ।

THE HIMACHAL PRADESH APPROPRIATION BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A BILL

to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Himachal Pradesh for the services for the year ending on the 31st day of March, 1979.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India, as follows:—

1. This Act may be called the Himachal Pradesh Appropriation Act, 1979. Short title

2. From and out of the Consolidated Fund of the State of Himachal Pradesh, there may be paid and applied further sums not exceeding those specified in column (3) of the Schedule amounting in the aggregate to the sum of thirteen crores, ninety eight lakhs, eighty-one thousand and seventy-four rupees towards defraying the charges which will come in course of payment during the financial year 1978-79 in respect of the services specified in column (2) of the Schedule. Issue of a further sum of Rs. 13,98,81,074 out of the Consolidated Fund of the State of Himachal Pradesh for the year 1978-79.

3. The sums authorised to be paid and applied from and out of the Consolidated Fund of the State of Himachal Pradesh by this Act shall be further appropriated for the services and purposes expressed in the Schedule in relation to the period mentioned in section 2 of this Act. Appropriation.

THE SCHEDULE

(See sections 2 and 3)

No. of Vote	Service and purposes	Sums not exceeding		Total
		Voted by the Legislative Assembly	Charged on the Consolidated Fund	
1	2	3	4	
		Rs.	Rs.	Rs.
3	Administration of Justice ..	1,02,000	3,35,000	4,37,000
5	Land Revenue ..	32,83,000	—	32,83,000
6	Excise and Taxation ..	13,40,000	—	13,40,000
8	Education, Art and Cultural Affairs and Scientific Research ..	15,00,000	30,964	15,30,964
9	Medical and Family Planning ..	60,97,000	—	60,97,000
10	Public Works ..	39,14,200	8,400	39,22,600
11	Agriculture ..	1,08,44,000	—	1,08,44,000
12	Minor Irrigation ..	99,64,000	—	99,64,000
13	Soil and Water Conservation ..	73,46,000	—	73,46,000
14	Animal Husbandry and Dairy Deve- lopment ..	—	1,79,200	1,79,200
16	Forest ..	100	—	100
17	Roads and Bridges ..	4,07,46,000	—	4,07,46,000
19	Social Security, Welfare and Jails ..	39,30,000	—	39,30,000
20	Public Health, Sanitation and Water Supply ..	1,37,92,530	3,470	1,37,96,000
21	Community Development ..	56,85,000	—	56,85,000
23	Food and Nutrition ..	—	41,210	41,210
25	Irrigation, Navigation, Drainage and Flood Control ..	1,00,00,000	—	1,00,00,000
26	Stationery and Printing ..	9,60,000	—	9,60,000
27	Road Transport ..	25,00,000	—	25,00,000
28	Tourism ..	13,30,000	—	13,30,000
30	Housing ..	55,17,000	—	55,17,000
33	Finance ..	—	57,32,000	57,32,000
34	Loans to Government servants ..	47,00,000	—	47,00,000
	Total ..	13,35,50,830	63,30,244	13,98,81,074

STATEMENT OF OBJECTS AND REASONS

This Bill is introduced in pursuance of clause (1) of Article 204 of the Constitution of India, to provide for the appropriation from and out of the Consolidated Fund of the State of Himachal Pradesh of the moneys further required to meet the expenditure charged on the Consolidated Fund and other expenditure as voted by the Legislative Assembly in respect of the estimated expenditure of the Government of Himachal Pradesh for the financial year, 1978-79.

SIMLA:
The 23rd March, 1978.

SHANTA KUMAR,
Chief Minister.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Finance Department File No. Fin. 1-C(1) 5/78]

The Governor, having been informed of the subject matter of the proposed Himachal Pradesh Appropriation Bill, 1979, recommends, under Article 207 of the Constitution of India, the introduction in and consideration by the Legislative Assembly of the said Bill.

